

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 34 OF 2001.

Cuttack, this the 5th day of September, 2001.

Golak Behari Baral.

....

Applicant.

Vrs.

COMMISSIONER, K. V. S. & ORS.

....

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
5.9.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 34 OF 2001.
Cuttack, this the 5th day of September, 2001.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

..

SRI GOLAK BEHARI BARAL, Aged about 55 years,
Son of late Baidyanath Baral, 2-RB, 21 Road-6,
Unit-IX, Bhubaneswar, District: Khurda.

: APPLICANT.

By legal practitioner: M/s. J. M. Mohanty, D. Samal, S. N. B. Ray,
N. K. Das, K. C. Mishra, Advocates.

: VERSUS :

1. Commissioner, Kendriya Vidyalaya Sangathan,
13-Institutional Area Saheed Jet Singh
Marg, New Delhi-110 016.
2. Assistant Commissioner Kendriya Vidyalaya
Sangathan HR-7, BDA Housing Locality,
Laxmisagar, Bhubaneswar-751 006.

: RESPONDENTS.

By legal practitioner: Mr. Ashok Mohanty, Sr. Spl. Counsel.

O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

S. Som
In this Original Application, the applicant has prayed for a direction to the Respondents to treat the transfer order dated 12-11-1999 as inoperative from 11-12-2000 and to be substituted by a posting at Brajarajnagar if no other posting in Orissa is possible and to carry out the order of this Tribunal dated 3.11.2000 in O.A. No. 295/2000 at Annexure-8, and to pay his salary for the period from 11-12-2000 till date on the grounds urged in the O.A.

2. Respondents have filed counter opposing the prayers of the Applicant and the Applicant has filed rejoinder. We have heard Shri J.M. Mohanty, learned Counsel for the Applicant and Shri Ashok Mohanty, learned Senior Counsel for the Respondents and have also perused the records.

3. For the purpose of considering this petition, it is not necessary to go into too many facts of this case. As noted, the applicant has earlier approached this Tribunal in O.A. No. 295/2000 praying for quashing of the order dated 12.11.1999 transferring the applicant from the post of ~~Headmaster~~ Head Clerk, Kendriyavidyalaya, Brajraj Nagar to K.V.S. Jhagrakhand in Madhya Pradesh. Earlier the applicant was transferred from Bhubaneswar KVS to KVS, BCCL, Kayalanagar, Dhanbad (Bihar) and the Applicant had approached the Hon'ble High Court of Orissa in OJC No. 5039/1996 which was disposed of by Their Lordships in order dated 19.8.1996. Though the Hon'ble High Court did not interfere in the applicant's order of transfer to Kayalanagar, Dhanbad, they noted the submissions made by the learned counsel for the K.V.S. before the Hon'ble High Court that a proposal has been sent to KVS Hqrs. to upgrade the KVS, Balasore and in case it is done, the post of Head Clerk will be upgraded and the case of applicant will be duly considered. But thereafter the applicant was transferred to Jhagrakhand. Original Application No. 295/2000 was disposed of in order dated 3.11.2000 with the following directions:

*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 a copy of this order*.

Applicant has stated that in view of the above order of this Tribunal, his transfer order to Jharkhand will be taken as inoperative and he will be deemed to be continuing at Brajaraj Nagar, and accordingly, he will be entitled to the salary etc. It is, ~~the admitted~~ deposition that the applicant has been relieved from his post at Brajaraj Nagar and is currently on leave. We have considered the ~~above~~ submissions ^{of} ~~the~~ made by the learned counsel for both sides carefully.

In order dated 03.11.2000, applicant's transfer order from Brajarajnagar to Jhagrakhand was not quashed and therefore, it can not be said that the applicant is deemed to be continuing at Brajaraj Nagar. Respondents in their counter have stated that at present there is no vacancy ~~or~~ inside Orissa and they would consider the case of applicant for posting in Orissa in the next available vacancy in the post of Head-Clerk which arises in Orissa. The Tribunal in their order dated 3.11.2000 directed that the applicant's case for posting in Orissa should be considered, if there is a available vacancy. The averment of the Respondents that at present there is no vacancy of headclerk available inside the Orissa has not been denied by the applicant. Learned counsel for the applicant has stated that because of re-structuring a vacancy of headclerk will be created in the

Office of the Asst. Commr. Learned Senior Counsel for the Respondents has stated in course of hearing that re-organisation scheme has been stayed by the Hon'ble High Court of Delhi. In view of this we accept the submission of the Respondents that there is no vacancy inside the Orissa in the post of Headclerk at present. In view of this the applicant has to wait for the next available vacancy arising in Orissa for being considered for posting in Orissa. As the Tribunal has not quashed his transfer order, it must be taken that the order is still operative. ^{Neelam} ^{Jfm} more so, there is no vacancy available inside the Orissa and in view of this, the prayer of applicant for treating that his transfer order to Jharkhand is non-operative is held to be without any merit. In any case in the earlier O.A., the applicant has prayed for quashing ~~his~~ transfer order and this has not been done, and therefore, the Tribunal in the present O.A. can ~~not consider~~ the same prayer and hold that his transfer order to Jharkhand is inoperative. This prayer of the applicant is accordingly rejected. Consequential prayer to consider him as continuing at Brajarajnagar and allow him the salary for the period is also held to be without any merit and is rejected. We however, make it clear that the case of the applicant should be considered for a posting ~~in~~ inside ^{Jfm} Orissa in the next available vacancy which arises in Orissa in terms of our order dated 3-11-2000.

4. In the result, therefore, the Original Application is rejected subject to our observations made above. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
S. 9/2001

KNM/CM.