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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.609 OF 2004
Cuttack, this the 29th day of July, 2005.

ARCHANA JENA.

Applicant.

-VERSUS-

Commissioner, KVS & Ors..

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *yes*

2. Whether it be circulated to all the Benches of the Central *yes*

Mohanty
29/07/05
(M.R.MOHANTY)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.609 OF 2004
Cuttack, THIS THE 29TH DAY OF July, 2005.

C O R A M:-

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

Archana Jena, Aged about 45 years,
Wife of Goutam Chandra Rout, Advocate,
Teacher, TGT (Biology) at present K.V.
Tatanagar, Loco Colony, Jamsedpur,
Permanently residing at Suryaloka Lane,
Chandi Chhak, Cuttack.

..... APPLICANT.

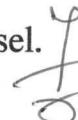
By the Applicant : M/s. S.R.Patnaik, G.C.Rout,
P.K.Kundu, Advocates.

VERSUS

1. Commissioner, Kendriya Vidyalaya Sangathan,
Saheed Jeet Singh Marg, 18 Institutional Area,
New Delhi-16.
2. Assistant Commissioner, Kendriya Vidyalaya Snagathan,
Mancheswar, Bhubaneswar.
3. Principal, Kendriya Vidyalaya, Tatanagar, Loco Colony, Tatanagar.
4. Principal, Kendriya Vidyalaya, Cantonment Road, Cuttack.

.....RESPONDENTS.

By the Respondents: Mr. Ashok Mohanty, Sr. Counsel.



O R D E R

MR. M. R. MOHANTY, MEMBER (JUDICIAL):

Applicant, a lady Trained Graduate Teacher (Biology) of Kendriya Vidyalaya Sangathan, having faced with an order of transfer dated 31-03-2003 from K.V. Cuttack to K.V. Tatanagar has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 assailing the same as illegal, arbitrary and against the transfer guidelines framed by the Sangathan. Respondents-Snagathan have filed a counter contesting the case of the Applicant.

2. Mr. A.A. Das, Learned counsel appearing for the Applicant and Mr. Ashok Mohanty, Learned Senior Counsel appearing for the Respondents-Snagathan were heard and the materials placed on record were perused.

3. In course of hearing, learned counsel appearing for the Applicant has submitted that it is a settled position of law that a transfer, per-se, is illegal and arbitrary, when it is effected to accommodate another employee and that, in the instant case, since the Applicant's transfer was ordered to accommodate another employee, the same was not tenable in the eye of law. It is his further case that before completion of tenure of five

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years, the Applicant should not have been subjected to transfer and, therefore, the action taken by the Respondents in this regard was in gross violation of clause - 10(l) of the transfer guidelines (Policy) framed by the Sangathan and that, being a lady employee, she was not to be transferred to a place beyond 500 KMs and yet she was transferred to KV at Tatanagar (which is more than 500 KMs from her native in Cuttack District of Orissa) and thereby she is put to utter difficulties. It has also been submitted that transfer of the Applicant to such a far place is not only detrimental to the education of her children but also against the humane approach, which, in effect has deprived her to take care of her old ailing parents-in laws. It has again been stated on behalf of the Applicant that although several representations were made by him, time and again, for considering her transfer/mutual transfer, the same did not yield any fruitful result, and that, on the other hand, others in the meantime, have been transferred and posted at various other KVs of their choice discriminatorily.

4. The learned Senior Counsel appearing for the KVS has submitted that transfer being an incident of service, it is not incumbent on the part of the Applicant to claim to continue at a particular place of her choice for eternity. Learned Senior counsel further submitted that it is not for the courts/Tribunals to interfere in the matter of transfer and that it is the 

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prerogative of the employer to decide who should be posted where and at what point of time. He has further submitted that because the employees were not inclined to be posted on transfer at the various KVs situated in different parts of the country, it was felt necessary to formulate a guidelines for transfer by the Respondent-Sangathan for the smooth functioning of the KVS. Lastly, the learned Senior counsel submitted that since the order of transfer was made in public interest, it is far stretching for the Tribunal to interfere with it .

5. At the outset, it is noted that the matter involving transfer is no longer res integra and admittedly, transfer being an incident of service no employee can claim a vested right to be posted at a particular place of his/her choice. 'Who should be posted where' is a matter for consideration of the Competent Authorities. Bearing in mind various decisions of the Apex Court in the matter of transfer, it is abundantly clear that the scope of the Tribunal to interfere in the matter of transfer is very limited. But it does not mean that the Tribunal is divested with the power to interfere in the matter of transfer, where the order of transfer suffers from arbitrariness and/or out come of bias and/or an outcome of violation of statutory rules/guidelines. It is also the settled position of law that an employee has a right to make representation, in case he/she feels aggrieved by any order

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passed by his/her authorities, and it is also expected of such authorities to give due consideration to the grievances as raised by him/her. It is altogether a different matter if it is not possible to accede to the request of the aggrieved employee and, in that event, there would be hardly any scope to approach the Court of Law alleging that his/her grievances had not been redressed. But it is a matter which concerns the Court/Tribunal if the authorities do not pay any heed to the grievance put forth by its employee and in such a situation the inaction is certainly depreciable being not congenial to healthy administration of personnel management. Like wise, it is for the masters to be considerate in passing orders, so that the same would not give rise to the cause of grievance of any one. It is the model employer who, while up keeping the smooth and healthy administration/personnel management within the organization, should also take care to redress the grievance of its employees in a manner as would not invite dissention and, thereby, the efficiency of the employees would grow up making them mentally sound to discharge their duties more efficiently.

6. Coming to the case in hand, it is not in dispute that the transfer guidelines/Policy framed by the KVS are statutory in nature. It is also not in dispute that all transfers and postings of the employees of the KVS are being done as per the said transfer guidelines/policy. Para- 10(l) of the said

transfer guidelines/policy; based on which the claim of the Applicant centers round for declaring her transfer under Annexure-A/l as illegal reads as under:-

“10(l) Where transfer is sought by a teacher under para -8 of the guidelines after continuous stay of 3 years in NE & hard stations and 5 years elsewhere at places which were not of his choice, or by teachers falling under the proviso to para-7 of these Guidelines, or very hard cases involving human compassion, the vacancies shall be created to accommodate him by transferring teachers with longest period of stay at that station provided they have served for not less than **five years** at the station. Provided that Principals who have been retained under para 4 to promote excellence, would not be displaced under this clause.

While transferring out such teachers, efforts will be made to accommodate lady teachers at nearby places/stations, to the extent possible and administratively desirable.”

It is the specific case of the Applicant that neither she had completed five years; nor she had the longest stay at KV Cuttack at the time of passing of the impugned order of transfer. Fact remains that her representations had not been attended to. In the counter no explanation has been offered with regard to violation of such guideline/policy. It has only been stated in the counter that the transfer of the Applicant was in public interest. The expression ‘public interest’ is not a magic word; which can do

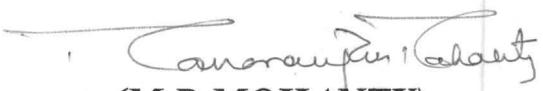
service for anything in any situation; nor is it a carpet under which anything could be concealed. The expression 'public interest' has to bear a definite purpose and the reason need be made available/disclosed at the earliest in course of judicial scrutiny. The expression 'public interest' like the expression exigency of service is often made as an apology for something that can not be justified. It is not that these concepts are not capable of visible demonstration and, in no circumstances that can be allowed to be used as a camouflage for a collateral purpose. From the facts disclosed in the counter, no public interest has been shown to exist in passing the impugned order. When the case has been challenged before a court of law by an employee, it was the bounden duty of the Respondents-Department to explain what were the public interest that prompted them to disturb the Applicant in gross violation of their transfer policy. The Respondents have failed to produce a scrap of paper/material to explain the 'public interest/administrative exigency' which commpelled them to issue the impugned order of transfer, excepting the fact that in order to accommodate another employee; which, by any stretch of imagination can only be construed to be of personal interest. That-apart, the policy to disturb the junior-most (at a station) is to suffer the transfer (in order to accommodate a distant/difficult station man) is certainly not a healthy one. If such a policy

would be allowed to rain the field, then a station junior shall continue to be station junior for all times to come and shall continue to face transfer every now and then; which would remain as most unhealthy personnel management. The transfer policy , in question, also requires that in implementing the policy of transferring a station junior, where it involves a lady, all efforts are to be made to accommodate here at the nearest station. In the case in hand, while deciding to disturb the Applicant from Cuttack, though vacancies were available at KV, Charibatia (the nearest one to KV, Cuttack), the Applicant was posted at KV, Tatanagar. No explanation has been given by the Respondents as to why the Applicant was not accommodated at KV, Charibatia.

In the above said view of the matter, it is bound to be held that the impugned order of transfer (of the Applicant) is not sustainable in the eye of law. However, since the Applicant has already joined at KV Tatanagar, the Respondents , in the fitness of things, are hereby asked to transfer back the Applicant to KV at Cuttack. In case the Respondents find it not feasible to transfer back the applicant to KV at Cuttack instantly, then they should issue orders transferring/posting the Applicant at KV No.1 (Second shift) at Bhubaneswar as against the vacant post of TGT (Biology); for which, as it appears, a proposal was pending with them. This exercise

should be completed by the Respondents within a period of thirty days from the date of receipt of copies of this order.

7. In the result, this Original Application is allowed in the aforesated terms . No costs.


(M.R.MOHANTY)
MEMBER (JUDICIAL)