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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.605 OF 2005

Cuttack this the 18th day of July, 2006

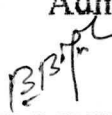
Saroj Kumar Pattanayak... Applicant(s)


-VERSUS-

Commissioner, K.V.S. & Two ors. ... 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


(B.B. MISHRA)
MEMBER (ADMN.)


(R.K. BATTA)
VICE-CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.605 OF 2005

Cuttack this 18th day of July, 2006

CORAM:

**THE HON'BLE MR.JUSTICE R.K.BATTA, VICE-CHAIRMAN
AND
THE HON'BLE MR. B.B.MISHRA, MEMBER(ADMINISTRATIVE)**

...

Saroj Kumar Pattanayak, aged about 43 years, S/o. Pranaya Kumar Pattanayak, At present, K.V.Sambalpur, At/PO/PS-Sambalpur, Dist-Sambalpur

(Now under transfer to K.V., C.C.L., Dakra, Jharkhand)

... Applicant

By the Advocates : M/s. J.M.Mohanty
K.C.Mishra
P.C.Moharana

-VERSUS-

1. Commissioner, Kendriya Vidyalaya Sangatha, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi-110 016
2. Principal, Kendriya Vidyalaya, Sambalpur, At/PO-Bareipali, Dist-Sambalpur
3. Asst.Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Pragati Vihar, Mancheswar, Bhubaneswar-751 017

... Respondents

By the Advocates : M/s.S.P.Nayak
M.K.Rout
Mr.Ashok Mohanty
(Senior Counsel)

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ORDER

MR.JUSTICE R.K.BATTA, VICE-CHAIRMAN: The applicant was transferred on his request to K.V., Bhubaneswar on 30.11.2000. From there, he was transferred to K.V., Sambalpur on 26.4.2002 since he was declared surplus. On 3.6.2005, the applicant has been transferred from Sambalpur to K.V., CCL, Dakra in the State of Jharkhand on the ground ^{of} ~~he~~ being declared surplus. This order is the subject matter of challenge in this O.A.

2. The case of the applicant is that in spite of his request/representation to post him at K.V., Charbatia, he has been transferred from K.V., Sambalpur to K.V., CCL, Dakra, in the State of Jharkhand. The applicant relies upon the transfer guidelines and in particular, Clause-6(B)(i) and Clause-10(3) of the transfer guidelines. According to him, the Respondents have not followed the transfer guidelines and even though the post at Charbatia was going to fall vacant on account of superannuation of one B.Nayak, who was to retire on 31.7.2005, the impugned order of transfer has been passed. According to the applicant, the transfer has been effected without application of mind and has become a punishment for the applicant. He has also placed before the Tribunal his personal problems. The applicant also complains that no period of maximum of stay has been specified in the transfer guidelines in so far as teachers are concerned, which is

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discriminatory vis-à-vis in case of Assistant Commissioner, Principals and Educational Officers, in whose cases a maximum period of stay is contemplated in the guidelines.

3. The applicant had prayed for interim order, but only notice was ordered. The applicant had thus approached the Hon'ble High Court by filing Writ Petition © No.9319 of 2005, which was disposed of with direction to this Tribunal to consider the prayer for interim relief and pass appropriate orders. By order dated 5.8.2005, the applicant was allowed to continue at Sambalpur and the Respondents were directed to consider his case for posting at Charbatia. It may be mentioned here at this stage itself that in fact the representation dated 28.6.2005 of the applicant for cancellation/modification of the transfer order was not acceded to and to this effect order dated 7.7.2005 had already been passed.

4. The Respondents in their reply have stated that the transfer of the applicant was made in terms of Clause-6(B)(1) since he was declared surplus being in excess of requirement based on staff sanctioned for the particular year. The applicant had, therefore, to be immediately redeployed as against sanctioned post and since there was no post to accommodate the applicant at Sambalpur or at any nearby place, there was no alternative on the part of the authority except to adjust him in the nearest available place i.e., K.V., CCL,

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Dakra in the State of Jharkhanda. The administrative requirement was to immediately re-deploy the excess staff as against the sanctioned posts and as there was no vacancy at Charbatia, posting him at that place was out of question, or else, the administration would have to bear the expenditure towards salary and other emoluments without any work assigned to applicant. The Respondents further contend that after retirement of the incumbent Shri B.Nayak at Charbatia, the said post was filled up by Clause-10(2) of the transfer guidelines by adjusting one A.C.Das who was working at K.V., Koraput, which is a hard station. The Respondents also contend that there are limited post of work experience teachers and they have to be posted against the clear vacancies.

5. In his rejoinder, the applicant has stated that he could have been accommodated at Charbatia, but the same was not done with ulterior motive and the transfer in question is against the transfer guidelines. Shri A.C.Das who was working at Koraput had not completed three years of service and therefore, question of transferring him to Charbatia did not arise.

6. We have heard the learned counsel appearing on both sides. Learned counsel for the applicant has placed reliance on Clause-3,4,6 and 10(3) of the guidelines and has contended that the transfer is contrary to the guidelines and amounts to punishment and the applicant should have been



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transferred against nearest vacancy available, which has not been done in this case.

7. On the other hand, learned counsel for the Respondents contended that the transfer guidelines do not confer an enforceable right and no case has been made out by the applicant to interfere with the transfer order. He has placed reliance on the decisions of the Hon'ble Supreme Court in Union of India vs. S.L. Abbas (AIR 1993 SC 2444) and State of U.P. and Ors. vs. Gobardhan Lal (2005 SCC (L&S) 55).

✓ 8. It is now well settled that guidelines issued by the Government on transfer do not confer a legally enforceable right in favour of an employee; who should be transferred where is a matter for appropriate authority to decide and the Tribunal does not sit over the orders of transfer and cannot substitute its own judgment for that of the authority competent to transfer. The Hon'ble Apex Court in Union of India vs. SL Abbas (supra) while dealing with the matter on transfer, which was challenged on the ground that the husband and wife must be posted in the same place, held as under:

✓ 6. "An order of transfer is an incident of Government service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a Government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that

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the order of his transfer is vitiated by mala fides on the part of the authority making the order, though the Tribunal does say so merely because certain guidelines issued by the central Government are not followed, with which finding we shall deal later. The Respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at Shillong, his children are studying there and also because his health had suffered a set-back sometime ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right".

The Apex Court in State of U.P. vs. Gobardhanlal (Supra) held as under:

7. "It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory

provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of the competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjecture or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer".

9. Coming to the case under consideration, the challenge by the applicant ^{is} preliminarily on the ground ~~is~~ that transfer guidelines have not been followed. The law laid down by the Apex Court is now settled that

transfer made even in transgression of administrative guidelines cannot be interfered with as the same do not confer any legally enforceable rights unless it is shown that the transfer is vitiated by mala fides or is made in violation of any statutory provision. Strictly speaking, no mala fides has been attributed in the O.A. though a vague attempt is made to raise the same during rejoinder. No violation of any statutory provision has been alleged by the applicant. The guidelines itself lay down that the same do not confer any right for claiming transfer. Though the guidelines provide for maximum period of service in a particular station in case of some class or category of employees yet it does not mean even the said employees cannot be transferred earlier to the completion of maximum period. However, the said question does not strictly arise since the applicant has been transferred having been declared surplus in the category W.E.T. where the number of post at this station is very limited. The applicant was transferred vide order dated 3.6.2005 and at that time no vacancy was available at Charbatia and that the vacancy was to fall vacant only with effect from 1.8.2005. Therefore, the applicant had to be transferred to a place where sanctioned post was available. The representation of the applicant for posting at Charbatia had already been rejected vide order dated 7.7.2005. Though subsequently Shri A.C.Das was transferred to Charbatia, the said A.C.Das

was never made party-respondent and as such the question of consideration for the posting of applicant to Charbatia in such circumstances would not arise. Besides this, the said A.C.Das was posted to Charbatia as per Clause 10(2) of the transfer guidelines from a hard station. The applicant has continued at the present station for almost a year by now and in the circumstances, we do not find any reason or justification either to quash the transfer order or to grant relief claimed by him.

10. In view of the above, the O.A. is hereby rejected in the aforesaid terms, with no order as to costs. Consequently, the interim order dated 5.8.2005 stands vacated.

B.B.M.
(B.B.MISHRA)
(MEMBER(ADMINISTRATIVE))

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(R.K.BATTA)
VICE-CHAIRMAN