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OA. No. 672/2002,
Order dt. 12.03.2003.

This OA has been heard alongwith OA No. 1030/2002, and orders have been dictated and pronounced in open Court attached to OA 1030/2002. In the result, for the reasons recurred in that order, I am not inclined to interfere in this OA.

A copy of the final order passed in OA 1030/02 may be kept in this record.

Meer,
12/03/03

Meer (S)

On dt. 12.3.03
Copy of final
order passed
in OA 1030/02
handed over to
counsel for both
sides and one copy
is kept in this record.

Par
S. M. D.

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ORDER DATED 12-03-2003.

Heard Ms.Sanju Panda, Learned Counsel appearing for the Applicant and Mr.Ashok Mohanty, Learned Special Counsel appearing for the Respondents/KVS and perused the records.

2. Applicant, on being declared surplus in her last place of posting at KVS, Charibatia, was directed to join at Bandamunda KVS (beyond Rourkela) under Annexure-7 dated 27.05.2002. It is her case that she being a lady employee, as per the Circular of the Respondents, efforts should have been made to accommodate her at nearby places/stations to the extent possible administratively, and, that as per the Circular of the Government of India (Dept. of Personnel and Training) dated 12.6.1997 under Annexure-5, since her husband is working as an Assistant Teacher in BM High School at Bhubaneswar, she should have been posted at the same station. Lastly, it has been urged by the Applicant that as per the guidelines issued by the KVS on 23/24-07-1996 and on 31-03-1999 (under Annexure-9 series) the Applicant should have been posted at nearby places, instead of adjusting her at a far off place, and, thereby, causing immense family disturbances and hardships. It has been urged that while disturbing the Applicant from Charbatia, a post was available at Keonjhar where she could

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have been adjusted. It has also been urged at paragraph 4.10 of the Original Application that since a post was lying vacant at Puri (due to promotion and posting of the existing incumbent to the grade of UDC) the case of the Applicant ought to have been considered for being posted as against that vacancy. It has been alleged that the Applicant had made her representation but no heed were paid to the grievances of the Applicant and that another person has been adjusted against the said post at Puri. Hence, this Original Application has been filed by the Applicant under Section 19 of the Administrative Tribunals Act, 1985 praying therein for a direction to the Respondents to take effective step regarding the transfer of the Applicant to any nearby place/Bhubaneswar, as per the circular under Annexure-8 series.

3. The Respondents, who have filed their counter counteracting the averments made by the Applicant in her Original Application have disclosed (with regard to para 4.10 of the Original Application, pertaining to the vacancy at KVS, Puri) as under:-

*17. That the averments made in para 4.10 is not correct and hereby denied. It is humbly submitted that one Sri R.K. Kausin who was declared surplus from K.V. Bareli has come in inter regional transfer and has been adjusted at KV Puri and no post of LDC is lying vacant at Puri at present".

4. The instructions of the KVS dated 31-03-2002 (under Annexure-7) provides as under:-

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"xxx xxx xxx. It has been decided that the surplus staff may be transferred against nearest available vacancies within the region. Proposals for inter-regional transfer of surplus staff may be sent to this office wherever it is not possible to redeploy them within the region for want of vacancies".

5. Neither of the parties (neither in their pleadings, nor during hearing) have made me aware as and when the post, in question, at KVS ,Puri fell vacant. But the fact reveals from the counter of the Respondents, that the post of L.D.C. was lying vacant; which was filled up by bringing persons from other KVS. No explanation has been given as to why the Applicant was not posted at Keonjhar and as to why she was sent to a distant place of Bandamunda. Fact also remains that as a disciplined staff, the Applicant reported to duty at Bandamunda and soon after joining at Bandamunda, she made a representation (under Annexure-9 dated 01-06-2002) for her adjustment/transfer/posting at nearby places at K. V. Mancheswar/ Bhubaneswar/puri(Orissa) but the case of the Applicant has not yet been considered by the Respondents for her transfer to KVS, Puri on the face of Annexure-8 series.

6. No doubt, transfer and posting of an employee is within the competence of the authorities. Courts/Tribunals has the limited power to interfere with the same. But at the same time, the Court/Tribunal cannot sort its eyes to see as to whether any illegality/irregularity has been meted out to the employees/citizens. It is a fact, as submitted at the Bar, that there is no statutory rules governing the transfer and

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posting of the employees of the KVS and, therefore, the KVS (Headquarters, at Delhi) issued administrative instructions time and again, governing the transfer/posting of its employee to meet such a contingencies. From Annexure-8 series (letter dated 31.3.1999), it is crystal clear that the Authorities competent have issued instruction that surplus staff may be transferred against nearest available vacancies within the region. But here, in this instant case, in utter violation of the said direction/instruction of the headquarters, the Applicant was posted at a distance place like Bandamunda although there was a vacancy at Keonjhar and another vacancy at Puri. She sought to have transferred and posted at Keonjhar/Puri against the vacancy in which other persons were adjusted. No satisfactory reason has also been advanced by the Respondents as to why her case was not considered for the vacancy at Puri. It appears, the Applicant was wrongly found surplus at Charbatia ; for the pupils strength increased soon. This aspect was, apparently, not examined by the authorities. I would like to record my dis-satisfaction for non-disposal of the representation under Annexure-9. This is nothing but appears to be a clear case of victimisation.

7. In normal course, I would have issued direction for consideration of the case of the Applicant against the vacancy at KVS Puri but, since the said post has already been filledup the Respondents are hereby directed to consider the case of the Applicant for her transfer and posting against the next available first vacancy at a nearby places as mentioned in her representation at Annexure-9 dated 01-06-2002.

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It has also been submitted by the learned counsel for the Applicant, during the oral hearing that the KVS is going to be expanded by opening new Schools at Bhubaneswar and a direction be issued to the Respondents that in the event of such opening of new Schools, the case of the applicant be also considered for her transfer. Though no materials have been placed on record to the extent of opening of new KVS at Bhubaneswar or nearby places, yet if it is a fact that the Respondents are going to open a new KVS at Bhubaneswar or nearby places, the case of applicant shall also be considered for transfer to the new KVS.

8. In view of the above direction, I am not inclined to interfere in the prayer made in the O.A.No.672 of 2002.

9. In the result, therefore, both the original Applications are disposed of. No costs.

Cav Sd/ M. R. MOHANTY
(MANOR MEMBER-(JUDICIAL)
MEMBER(JUDICIAL) 12/03/03