

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 1041 of 2002

Cuttack, this the 19th day of April, 2005

Namita Dey Applicant

Vs

Union of India & others..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Call
19-04-05
(M.R.MOHANTY)
MEMBER (JUDICIAL)

Ans
(B.N.SONI)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 1041 of 2002
Cuttack, this the 19th day of April, 2005

CORAM :

HON'BLE SHRI B.N.SQM, VICE-CHAIRMAN

AND

HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

.....

Mrs. Namita Dey, wife of B.K.Sen, Plot No. 261, Madhusudan Nagar, Unit-4, Bhubaneswar-751001.

..... Applicant

By the Advocate - M/s Asim Amitav Das, B.Mohanty,
M.Balabantaroy, A.Behera.

VERSUS

1. Union of India through Kendriya Vidyalaya Sangathan, represented through its Commissioner, 18-Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016. Union of India, represented through the Secretary to Government, Ministry of Broadcasting, New Delhi.
2. Joint Commissioner, Kendriya Vidyalaya Sangathan, 18-Institutional Area, Shaheed Jeet Singh Marg, New Delhi-110016. Union of India, represented through the Secretary to Government, Ministry of Broadcasting, New Delhi.
3. Assistant Commissioner, Kendriya Vidyalaya Sangathan, HP-7, BDA Locality, Laxminagar, Bhubaneswar, Dist-Khurda.

..... Respondents

By the Advocates - M/s Ashok Mohanty (Sr. Counsel),
S.P.Nayak (For R-2&3)

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ORDER

SHRI B.N.SQM, VICE-CHAIRMAN

This O.A. has been filed by Mrs. Namita Dey who has faced termination of service under Article 81(d). She has assailed that order passed by the Disciplinary authority and upheld by the Appellate authority on the ground that both the Respondents while passing such orders have not taken into consideration the representations and the certificates of illness submitted by her and that such orders are fraught with malafide and have been passed in violation of the principles of natural justice.

2. Shorn of details, the facts of the case are that the applicant joined the Respondents Sangathan on 27.1.94 at K.V. Meghatuburu. Thereafter, she was declared (along with three others) as surplus staff on 3.8.99 and transferred to INS, Valsura in the state of Gujarat. On receipt of this transfer order, she approached the Respondents for reconsideration of her transfer on the ground that she has two school going children and she herself is a chronic gynaec patient, taking periodical treatment in the hospital at Bhubaneswar. Notwithstanding her representation dated 16.11.99, she was relieved from the Angul ^{KV.} with effect from 26.11.99. However, she could not join her new place of posting due to illness. On the other hand, Principal of K.V. INS, Valsura by his letter dated 7.12.99 refused her grant of leave, whereupon she

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submitted representation to the Deputy Commissioner, Headquarters on 21.12.99 seeking grant of leave as well as change in her station of posting to any K.V. within Bhubaneswar Region. Thereafter, on 16.11.2000 she was served with a memorandum to showcause why her lien on the post held by her should not be terminated in terms of Article 81(d) (3) of the Educational Code (Code, in short). By submitting a representation dated 'Nil' she submitted sick leave application with the certificates of illness to the Assistant Commissioner. She also pointed out in his application that she was not aware of the provision of Article 81(d) (3) of the Code to be able to give a show-cause (she filed another representation dated 15.1.01 to the Commissioner of the Sangathan to reconsider her prayer for changing the station of posting. This was followed by another representation dated 1.2.01.). She was later directed by their letter dated 1.10.01 to report to K.V., Valsura within 10 days. In response by her letters dated 12.10.01 and 15.10.01 she submitted medical certificate issued by specialist of District Headquarters Hospital, Angul for consideration of her case by the Respondents. By issuing a letter dated 5.11.01, Assistant Commissioner called upon the applicant to appear before him on 16.11.01 for personal hearing as to why her services should not be dispensed with under Article 81(d). The applicant reiterated her request for modification of the order of transfer by submitting representation on 21.1.02 but before that, by his letter dated 17.1.02, Assistant Commissioner, in her exercise of his power in the Code, served on the order confirming

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loss of lien of the post she used to hold and she was removed from service. Being aggrieved by the said order, the applicant in this O.A. has approached this Tribunal to quash the orders dated 17.1.02 and 7/3.8.02 under Annexure-16 & 18 respectively and has prayed for reinstating her in service with all financial/service benefits.

3. Per contra, the Respondents have resisted the O.A. being without merit. Their prime contention is that the applicant faced transfer to K.V., INS, Valsura because she was declared surplus due to decrease in the sanctioned staff of the K.V., Angul in the year 1999-2000. It is their case that the petitioner did not join her new place of posting on some pretext or the other, that left the competent authority with no other option but to proceed against her according to the relevant procedure as has been prescribed to deal with such cases of absenteeism under the provision of Article 81 (d) of the Code. They have submitted that the order passed by the Disciplinary Authority (DA, in short) and the Appellate Authority (AA, in short) do exhibit due diligence and application of mind. They have also pointed out that her request for adjustment within the region was not possible due to nonavailability of vacancy, and, therefore, the grievance ventilated by the applicant is without merit. They have also disclosed that as the applicant had applied political pressure to modify her order of transfer, disciplinary proceeding was initiated against her under Rule 16 of the CCS(CCA) Rules, 1965 and she was served with a penalty of 'Censure'. They have also pointed

out that the plea that she was suffering due to ill health was an afterthought because till her period of tenure at Angul came to an end, she had never complained about her health problems. They have also pointed out that on the repeated submissions of the applicant that she was medically unwell, the matter was referred to the Government Hospital, Unit-IV, Bhubaneswar for medical examination of her health condition. The said Medical Supdt., Government Hospital by his report dated 6.2.01 certified that the applicant was fit to resume duty on 1.2.01, and, accordingly, the applicant was directed vide order dated 1.10.01 to report for duty at K.V., INS, Valsura. She was also categorically informed that in case of her failure to resume duty, it would be presumed that she was no longer interested in resuming duty and action under Article 81(d) of the Code would be confirmed (Annexure-B). However, the applicant did not join and it is in this background that her lien was terminated after giving her reasonable opportunity to place her case and giving her enough time to join the new place of posting. It is also disclosed by the Respondents that even after termination of service of the applicant under Article 81(d), she was given one more opportunity for personal hearing on 18.12.01. It was on that occasion the applicant categorically submitted that she would not be joining at the place of posting unless the same order was modified.

4. We have heard the Ld. Counsel for the parties and have perused the records placed before us.

5. No legal issues are involved in this case to be

answered nor any complicated facts of the case has been raised by the applicant. The O.A. revolves round the fact whether transfer being an all India liability of the applicant she was entitled to any relief on the ground of her illness. The main contention of the applicant is that she being sick and having a family of two children, was not in a position to move on transfer to K.V., INS, Valsura. The Respondents, on the other hand, have submitted that the applicant has raised a bogie of her illness. It is their case that until she was transferred from K.V., Angul she had never ventilated her health problems. Secondly, they have said that on her repeated representations about her physical inability due to sickness to move to a distant place, her case was referred to Medical Supdt., Dist. Hospital for his opinion. The said medical authority had given a categorical report that she was fit to resume duty with effect from 1.2.01. In the face of such a categorical medical opinion, it was unreasonable on the part of the applicant not to have moved on transfer. They have also pointed out that even after the order of termination of her lien, she was given personal hearing opportunity in December, 2002 to resolve the matter, but she repeated her old point that unless her transfer order was modified, she could not join. They have found her request unreasonable. They have stoutly denied that she was being discriminated and that one Ms. Nirupama Nath Sharma was given a better treatment. The fact of the matter is that in the case of Ms. Sharma, she had given choice of posting both for Bhubaneswar region and for Kolkata region

and she was accommodated in Kolkata region where there was a vacancy, but in the instant case the applicant was insisting on the posting in Bhubaneswar only.

6. We have considered the facts of the case very deeply. The Lt. Counsel for the applicant had also repeatedly canvassed before us for a sympathetic consideration of the case of the applicant. On consideration of the matter on merit, we find that the applicant had entered into the service of K.V.S. with the condition of service that her job is transferable anywhere in the country. Hence the order of transfer can not be assailed except on account of malafide or bias. It is however, not being disputed that her transfer in this case was necessitated on account of her being declared surplus along with the others, the allegation of bias does not hold good. In that perspective it may not be disputed that her posting to K.V., INS, Valsura was necessitated to retain her in service otherwise a surplus staff faces retrenchment. From the facts of the case we are unable to disagree with the Respondents that the plea of sickness of the applicant is nothing but a ploy to avoid transfer. The question that must be asked to the applicant and answered by her is that whether she is bound by the condition of service, and, if so, why she could not take up the job at K.V., INS, Valsura, and then make representation for her transfer to a place nearer her home. It can not be anybody's case that an employee of the Sangathan will not be bound by the rules and regulations or the conditions of service governing its employees. If any relaxation is

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allowed in this matter without valid reason, it will lead to chaos and favouritism and consequential damage to the organization. Undoubtedly, everybody has to follow the discipline of the organization otherwise the stability of the organization itself is affected. We must also observe here that the applicant being a teacher should have acted more discreetly and sincerely setting examples before all and sundry. The conduct of a teacher has to be always above reproach. We are constrained to observe that the behaviour of the applicant in this case to obtain modification to her transfer order was as pedantic and loquacious as found in the conduct of an ordinary official in the other Government Organizations. Character building of the students being one of the most important tasks of a teacher, we can hardly afford to tolerate a teacher using all means to wriggle out of posting to a place not of her choice, even when she otherwise focus the prospect of unemployment. The applicant, on the other hand, would have given a better account of her conduct by obeying the order of transfer and then putting up her difficulties to the authorities for consideration. That would have been the correct and appropriate behaviour expected from a person who is bounden with the task of character building in the society. The Ld. Counsel for the applicant has asked for mercy. It is not for us to show mercy in this case. It is for the applicant, if she is so advised, to approach her employer to show her mercy provided she could decide to go and join her post at K.V., INS, Valsura.

7. In the system of delivery of justice, equity and

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fairness are the two cardinal pillars. Equity demands that we hear and understand the standpoints of both the parties and fairness demands that we are impartial in assessing the inter-se merit of the case. In this case, we are satisfied that the Respondents had given enough latitude to the applicant to make up her mind to join her new appointment and they had given her a final notice of termination of lien only after she was declared fit for joining duty by the Medical Supdt. Ex facie no injustice seem to have been done in this case. However, the applicant is given liberty to approach the Respondents for a reconsideration of her case by giving her one opportunity to resume duty at K.V., INS, Valsura and then consider her application for a change to a K.V. nearer her home. We order accordingly. No costs.

Sealed
19/04/05

(M.R.MOHANTY)
MEMBER (JUDICIAL)

Subrata
(B.N.SOM)
VICE-CHAIRMAN

R KUMAR