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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 175 OF 2008
CUTTACK, THIS THE ~~22~~²⁰ DAY OF September, 2008

Nagendra Nath Dasmohapatra..... 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 ?


(K. THANKAPPAN)
MEMBER (JUDL.)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 175 OF 2008
CUTTACK, THIS THE ²² DAY OF September, 2008

CORAM :

HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)

Sri Nagendra Nath Dasmohapatra, aged about 53 years, S/o.Late Kunja Bihari Dasmohapatra, resident of Vill/PO-Purusottampur, Via-Kamarda, Dist Balasore, at present working as PGT (History) In Kendriya Vidyalaya No.1, Bhubaneswar, Dist. Khurda.

.....Applicant

Advocate(s) for the Applicant- M/s. K.C.Kanungo, S.Beura,
S.K.Patnaik.

VERSUS

Kendriya Vidyalaya Sangathan represented through,

1. The Commissioner, Kendriya Vidyalaya Sangathan 18, Institutional Area Saheed Jeet Singh Marg, New Delhi-110016.
2. Asst. Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Bhubaneswar, Pragati Vihar Colony, Mancheswar, Bhubaneswar, Dist. Khurda.
3. Principal, Kendriya Vidyalaya (No.1), Unit-IX, Bhubaneswar, Dist- Khurda, Orissa.
4. Sri Trilochan Pradhan, Post Graduate Teacher (PGT in History), Kendriya Vidyalaya, Baikunthapur (SCCL), Chhatisgarh.

..... Respondents

Advocates for the Respondents – Mr. Ashok Mohanty (Sr. Adv.)

ORDER

HON'BLE MR.C.R.MOHAPATRA, MEMBER(A)

The present O.A. has been filed by the applicant challenging the transfer order at Annexure-A/2, transferring him from Bhubaneswar to Baikunthapur. The following is the relief sought by him:

"To quash Annexure-A/2 in so far it relates to the Applicant and Respondent No.4."

2. Applicant had prayed for interim relief to stay the transfer order. This Tribunal after hearing both the sides granted an ad interim stay of the impugned order under Annexure-A/2 in so far as the applicant and Respondent No.4 are concerned. This interim stay has been allowed to continue until further orders.

3. The applicant is a Post Graduate Teacher in History in the Kendriya Vidyalaya Sangathan and posted at Bhubaneswar No.1 Kendriya Vidyalaya. Since his joining as a TGT on 17.09.1984, he has got postings at different places including Indo-Bhutan and Indo-Pak Border. His last posting was at KV,Samba, Jammu Region where he continued for 5 and $\frac{1}{2}$ years. Considering his representation, he was transferred to KV-I, Bhubaneswar where he joined on 6.9.2006. Before he

could complete two years, he has been transferred to accommodate another teacher under priority category from KV, Baikunthapur, Chhattisgarh. The applicant's contention is that he has not completed his normal tenure of three years and that too he has got the posting in Bhubaneswar under the priority category having been transferred from Samba in Jammu Region. The applicant further contends that Respondent No.4 has given choice stations like Balasore, Sambalpur, Talcher, Baripada and Bhubaneswar knowing fully well that except at Bhubaneswar, PGT, History post does not exist in the other stations of his choice. He also alleges that Respondent No.4 is aware that there is a vacancy at KV, Chaudwar and there are vacancy in PGT, History at Berhampur and INS Chilika. By writing those five stations as choice stations, in fact, Respondent No.4 has made the applicant as the target of displacement. Applicant alleges violation of transfer guidelines by the KVS Authorities and on these grounds, he has sought to quash his order of transfer from Bhubaneswar to Baikunthapur and the posting of Respondent No.4 to Bhubaneswar.

4. Respondents have opposed the prayer of the applicant by filing their counter. They have justified the applicant's transfer citing clause-15(1) of the transfer guidelines

of the Kendriya Vidyalaya Sangathan, which came into effect on 13.3.2006. This clause reads as under:

“ Where transfer is sought by a teacher coming under PCGR and no vacancy is available at the station of his choice, required vacancy will be created by displacing a teacher of the same category (post/subject) with longest stay at the said station and not belonging to CDA. However, nobody shall be displaced in this manner, as far as possible, before completing a tenure of three years. If no non-CDA category employee with more than 3 years tenure is not available at the station of first choice of a PCGR category employee, the exercise will be one for locating such a person at stations of his second, third and lower choices, in that order. If no non-CDA employee with more than 3 years' tenure is available at any of the stations of choice, the non-CDA employee with longest tenure out of all the preferred stations taken together, will be displaced. The displaced teacher will be accommodated against available nearby vacancy as far as possible within the region. The resultant vacancies arising out of transfer orders as per first priority list, will be used to accommodate non-PCGR category requests, who could not be accommodated in the first priority list, to the extent possible.

Further, a teacher who has completed tenure in priority area and wants to come to his/her choice place in the priority area, may be transferred on request by displacing the senior most teacher (in the manner as stated above) at the station in case of non-availability of vacancy at his/her choice station. This will be applicable to both intra and inter region transfers. The request of the displaced for modification to the choice places will be considered against the vacancies arising upto 30th November of the year (Amended on 24.11.2006). However, the stay of displaces, who comes back/called back to the station from where displaced before completion of three months of active service will remain uninterrupted (Amended on 15.11.2007).”

5. The Respondent Department has stated that the Respondent No.4, who completed three years of stay at Baikunthapur, requested for a posting of his choice to Bhubaneswar. As Baikunthapur has been declared as hard station, Respondent No.4's request comes within the ambit of the "priority category for grant of request transfer". In terms of the guidelines quoted above, the applicant was identified for displacement to accommodate the Respondent No.4 and hence there was no malafide or any violation of transfer guidelines. They have also justified the action on administrative exigencies and public interest in paragraph-13 of their counter.

6. The applicant by filing the rejoinder has pointed out that the criteria of 'longest stay', which has been made applicable, has wrongly been applied because he was the only teacher of his category (PGT History). He more or less reiterated the points and the grounds already averred in the Original Application that he has come to Bhubaneswar from a hard station i.e. Samba, Jammu region. The applicant submits that the Respondents have tried to justify the transfer in the guise of public interest and administrative exigencies without considering the circumstances under which he has been posted in Bhubaneswar after long twenty three years of service.

7. Arguments were heard from both the sides and documents/records were perused.

8. Normally, in the case of transfer, we are not inclined to interfere, as transfer is an incidence of service but in this case because of the peculiar circumstances, there are justifiable reasons of such interference by this Tribunal. The posting profile of the applicant bears testimony to the averments made by him regarding hard stations covered during his long 23 years of service. Further he himself came to Bhubaneswar on his own request while being posted in a difficult station at Samba in Jammu Region. After being posted at Bhubaneswar, he has hardly spent less than two years when the orders of transfer were issued. So displacing the applicant in these circumstances to accommodate Respondent No. 4 under the PCGR category does not appeal to judicial conscience. While considering the hard station of Respondent No.4, the authority ought to have seen whether PGT post, to which Respondent N.4 in the PCGR category belonged, is available at the four places of his choice excluding Bhubaneswar. The authorities also failed to appreciate that the concept of 'longest stay' at the station i.e. Bhubaneswar was in no way relevant to the case of the applicant as he was the only PGT (History) at KV No.1, Bhubaneswar. The application of Clause 15(1) of the

guidelines, it appears has been done in a very perfunctory manner and without due application of mind. Except making a bald statement that the transfer has been made in public interest/administrative exigencies, nothing substantial has been averred in the counter bringing out the administrative exigencies that propelled the authorities to make the transfer/posting contrary to their guidelines.

9. In the aforesaid facts and circumstances, we are of the view that the transfer of the applicant from Bhubaneswar to accommodate Respondents No.4 is not justified and the order of transfer deserves to be quashed. We order accordingly. However, it is for the Respondents to consider the request of Respondent No.4 taking into account the vacancy position in the concerned discipline at any other station of his choice.

10. In the result, the O.A. stands allowed. Parties to bear their own costs.

K.Thankappan
(K.THANKAPPAN)
MEMBER (JUDL.)

C.R.Mohapatra
(C.R.MOHAPATRA)
MEMBER (ADMN.)

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