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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 238 of 2008
Cuttack, this the 24th day of September, 2008

Smt.Prasanti Kumari Subudhi Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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

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(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

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C O R A M:

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

Smt. Prasanti Kumari Subudhi, aged about 34 years, Wife of Bidhiswar Narayan Nayak, at present working as Librarian, Kendriya Vidyalaya No.1, Bhubaneswar, Dist. Khurda (under order of transfer).

.....Applicant

Legal practitioner :M/s.J.M.Mohanty, K.C.Mishra,
P.C.Moharana, R.K.Roy, Counsel.

- Versus -

1. Commissioner, Kendriya Vidyalaya Sangathan, represented through its Commissioner, K.V.S.,18 Institutional Area, Saheed Jeet Singh Marg, New Delhi.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, KVS Pragati Vihar Colony, Mancheswar, Bhubaneswar-751 017, Dist. Khurda.
3. Principal, Kendriya Vidyalaya No.I, Bhubaneswar, Unit-IX, Bhubaneswar, Dist. Khurda.
4. Mr.Laxmidhar Rout, Librarian, Kendriya Vidyalaya, Baripada, At/Po/Ps Baripada, Dist. Mayurbhanj.

....Respondents

Legal Practitioner :Mr. Ashok Mohanty, Sr. Counsel with M/s.M.Tripathy, B.Panigrahi, Counsel.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant, is at present working as Librarian in Kendriya Vidyalaya No.1, Bhubaneswar. She started her career as Librarian in KV, Happy Valley Shillong w.e.f. 30.11.1993. Thereafter she was transferred to KV, Jharsuguda where she remained from 08.12.1994 to 19.04.2003 wherfrom she was transferred to Surda and worked there till 06.09.2004. From Surda she was transferred to Kendriya Vidyalaya No.4, Bhubaneswar on 08.09.2004. Just after completion of about 8 months when she was transferred to KV, Adra on 30.05.2005, she approached this

(1)

Tribunal in OA No. 268 of 2005. While the matter was pending for adjudication in this Tribunal, she was transferred to KV No. 1 (2nd shift), Bhubaneswar where she joined on 01.04.2006 and again faced the order of transfer to KV, Baripada under Annexure-A/12 dated 17.08.2008 which she challenged in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 challenging the same to be bad in law being contrary to the transfer guidelines formulated by the Sangathan under Annexure-A/14.

2. Respondents 1 and 3 filed their counter *inter alia* stating that while the Applicant was working in KV No. 4, Bhubaneswar, she was transferred to KV Adra in public interest in order to accommodate Shri N.R.Das, Librarian from KV, Namrup (HFC) who is covered under PCGR category as per transfer guidelines. However during the pendency of the OA No. 268 of 2005, she was adjusted against the vacancy created in KV No.1, Bhubaneswar. As the order of transfer to Adra stood modified under Annexure-A/3, the applicant continued to stay for three years at Bhubaneswar. It has been averred that as per para 15.1 of the transfer guidelines whenever transfer is sought by a teacher coming under PCGR and if no vacancy is available at the particular station of his/her choice, vacancy is to be created by displacing a teacher of the same category (post/subject) who has longest stay at the said station and not belonging to CDA. However, as per the guidelines, none shall be displaced in this manner, as far as possible, before completing tenure of three years. If no non-CDA category employee with more than three years tenure is available at the station of first choice of a PCGR category employee, the exercise will be done for locating such a person at stations of his/her second, third and lower choices in that order. If no non-CDA employee with more than three 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. Further it has been averred that as per clause 23 of Annexure-A/14, the transfer guidelines is also applicable to a non-teaching staff. One Laxmidhar Rout, who was working as Librarian in KV, Baripada has applied for his transfer on the ground that he is having less than three years to retire by giving his choices station at (1) Cuttack; (2) Bhubaneswar (3) Charbatia, (4) Puri and (5) Khurda Road. It was found that the Librarian working at KV, Cuttack has not completed three years as on 31.3.2008 and as such he was not displaced. However, it was found that the applicant has been working at Bhubaneswar for more than three and half years and is the senior most librarian in the Bhubaneswar Station. As such she was transferred in public interest to KV, Baripada to accommodate Shri Laxmidhar Rout, Librarian at Bhubaneswar station. During counselling the Applicant agreed to face the order of transfer but by submitting representation she had sought for such transfer either to KV Puri or KV, Khurda Road. Since there was no vacancy in the aforesaid places, the request of the applicant could not be acceded to and accordingly, she was transferred to KV, Baripada. Accordingly, the Respondents 1 to 3 opposed the prayer of the Applicant made in this OA.

3. Learned Counsel for the Applicant besides reiterating the stand taken in the Original Application as also in the rejoinder has argued that the Hon'ble Apex Court has deprecated the frequent unscheduled and untimely order of transfer of employees from one station to another as it not only disrupts the education of the children of the transferred employee but also creates disharmony in the family and the present transfer being one and the same. He has also argued that transfer to accommodate another employee has been held by the Apex Court per se illegal. Since the present transfer is one of such frequent unscheduled transfers to accommodate another employee, the same is liable to be quashed. By referring to

some of the clauses under Annexure-A/14, he has argued that as the present transfer is opposed to the transfer guidelines, the order of transfer is liable to be quashed. This was strongly opposed by Learned Senior Counsel appearing for the Respondents by stating that Applicant accepted the offer of appointment and joined the post in question by knowing fully well that the post is having all India transfer liability and that transfer is an incidence of service, the Applicant should not have opposed her transfer. He has further argued that who should be transferred and where is a matter to be decided by the competent authority. In regard to violation of the transfer guidelines, as pointed out by the Learned Counsel for the Applicant, it has been argued by the Learned Senior Counsel for the Respondents that the order under Annexure-A/14 being a mere guideline, violation of which cannot be a ground for quashing the order of transfer made in public interest; especially when KV is an institution meant for imparting the education to the students.

4. We have given our thoughtful consideration to various arguments advanced by the parties. We may state it is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down unless such order is passed *mala fide* or in violation of the statutory Rules. Further in a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the Department. It has been held by the Hon'ble Apex Court in the case of *Shilpi Bose v. State of Bihar*, *AIR 1991 SC 532* that where a competent authority issues transfer order with a view to accommodate a public servant the same cannot be interfered with by the court. In the case of *Union of India v. H.N. Kirtania*, *1989 (3) SCC 445*, and in the case of *Gujurat Electricity Board v. Atmaram Sungomall Pashani*, *AIR 1989 SC 1433* it has been held that transfer of an officer holding a transferable post cannot be objected to and that

Government is the best judge to decide to distribute and utilize the services of an employee. In the case of State of Madhya Pradesh v. S.S.Kourav, AIR 1995 SC 1056 it has been held that courts or Tribunals are not the Appellate Authority to decide the question of transfer of officers made on administrative grounds. The wheels of the administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict/interfere with the working of the administration.

5. Above noted law clearly establishes that the grounds upon which the Applicant seeks to annul the order of transfer do not give any free hand to this Tribunal to interfere in the present order of transfer; especially these cannot be a ground for interfering in the present order of transfer; especially in absence of any proven *mala fide* and that the Applicant has herself opted for a posting either at KV, Puri or Khurda. Therefore, we refrain from doing so.

6. However, we hope and trust the Respondents more particularly Respondent No.2 in exercise of his discretion would allow reasonable time, which should be not less than one month from the date of this order, to the Applicant to be relieved from her present place of posting.

7. In the result, this OA is disposed of in the afore-stated terms. There shall be no order as to costs.

K. APPAN
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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