

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.241 of 2008
Cuttack, this the 14th day of October, 2008

Upendra Prasad Singh 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?

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

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O.A.No.241 of 2008
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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)

Upendra Prasad Singh, Aged about 58 years, Son of Late Bisuni Singh a permanent resident of Village Haripur, Post. Haripur, Via-Badahata Trilochanpur, PS. Khaira, Dist. Balaosre, at present working as Principal, KV, Gandhimarg, Angul.

.....Applicant

Legal practitioner :M/s.Rabi Narayan Mishra,
D.K.Mohanty, Counsel.

- Versus -

1. Kendriya Vidyalaya Sangathan, represented through its Commissioner, Kendriya Vidyalay Sangathan (HQ) 18 Institutional Area, SJS Marg, New Delhi-110 602.
2. Assistant Commissioner, Kendriya Vidyalaya Sangathan, Bhubanswar Region, Pragati Vihar, Mancheswar, Bhubaneswar, Dist. Khurda.
3. Shri D. Ojha, Principal, Kendriya Vidyalaya, Puri, At/Po/Dist.Puri.

....Respondents

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

O R D E R

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

Applicant while working as Principal, KV, Sambalpur faced the order of transfer to KV, Angul on 24.10.2005 and since then, he has been continuing as Principal in KV, Angul. Now vide order under Annexure-A/2 dated 23.06.2008 he has been transferred and posted to KV, Bargarh which he assails in this Original Application filed U/s.19 of the Administrative Tribunals Act, 1985. His challenge is based on the grounds that (i) transfer



policy framed and adopted by the Respondents specifically prohibits any such transfer at the fag end of the service career of an employee and his date of retirement being 30.06.2010 he ought not to have been disturbed; (ii) this is not a routine order of transfer but is a punitive one; (iii) Transfer attaching stigma could not have been resorted to without affording any opportunity; (iv) None of the employees, having either three years or less than three years have been transferred along with the Applicant. If it is so, then it is at their own request; (v) His representation has been rejected without taking into consideration the points raised by the Applicant vis-à-vis the transfer policy framed by the KV; (vi) present transfer would seriously affect his post retiral settlement and marriage of his grown up daughter (vii) transfer order of many of the similarly situated Principals have been cancelled whereas step motherly attitude has been shown to his case. In support of his contention that the order of transfer being a punitive one is liable to be quashed he has relied on the decision of the Hon'ble Apex Court rendered in the case of **Syndicate Bank v The Workmen**, AIR 1966 SC 1283, of the Hon'ble High Court of P&H in the case of **Lachman Dass v Shiveshwarkar and others**, AIR 1967 Punjab 76 and of the Tribunal in the case of **K.K.Jindal v General Manager, Northern Railway and Others**, ATR 1986 CAT 304 holding that **if an order of transfer is made *mala fide* or for some ulterior purpose, like punishing an employee, the same is liable to be quashed because *mala fide* exercise of power is not considered to be legal exercise of the power given by Law.**

2. Reasons ascribed in the counter, by the Respondents are that the transfer of the Applicant has been effected not for any other reason but due to administrative exigency and the Applicant has been transferred from

KV, Angul to KV, Bargarh which is within the Bhubaneswar region and is not far away from his present posting. In spite of the Applicant having transfer liability, during his entire period of service, he has been posted in Bhubaneswar Region only. There is no clear instruction under clause 2(i) of the transfer guidelines, prohibiting transfer of an employee who is having less than three years to retire on reaching the age of superannuation. It only specifies 'category whose dislocation will be avoided'. The transfer order of the applicant passed by competent authority in exigencies of services under para 8(ii) of transfer guidelines and in the interest of the students as the class XII results of KV, Angul headed by the Applicant were 74.79%, 82.90% & 83% for the years, 2006, 2007 and 2008 which were much below the average result of Bhubaneswar Region (to which KV, Angul belongs) and as such, continuance of applicant in the same Vidyalaya will be detrimental to the interest of the institution. The Respondents have denied the stand of the Applicant that none having three years to retire, have faced the order of transfer by stating that 21 Principals who are going to retire within three years had been transferred. They have also stated that transfers of Principals are effected in June i.e. after the declaration of CBSE results every year and as such, it cannot be said that the present transfer is made during mid-academic session. While denying the allegation of applicant that the transfer is effected on pick and choose manner, it has been stated by the Respondents that all the principals whose performance was not satisfactory had been transferred along with the Applicant. Similarly, while denying the allegation of *mala fide* and bias made by the Applicant, the Respondents have categorically stated that the transfer is effected keeping in mind the inbuilt provision provided in the transfer policy such as to maximize the overall satisfaction level of its

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employees, subject always to paramount need to protect academic interests of students and administrative efficiency of the organization. In the light of the above, the Respondents have opposed the prayer of the Applicant with prayer to dismiss this OA.

3. By filing rejoinder, the Applicant, specifically denied the stand taken by the Respondents in regard to the passing percentage of the students and has stated that as this is a punitive transfer attaching stigma of unsatisfactory work which ought not to have been effected without affording opportunity in compliance with principles of natural justice and the same having not been done, the order of transfer is liable to be quashed. Further stand of the Applicant is that if percentage of passing of the students is the reason of such transfer of the Applicant at the fag end of his service, there are many KVs, having lesser percentage of passing of the students but the Principals of those KVs have not faced the order of transfer whereas the Applicant who is having less than three years of service has been transferred. It has further been maintained by him that the Principal who has been transferred and posted in place of the Applicant, his performance is worse while taking into consideration the passing percentage of the students, than him and therefore, this plea is nothing but an after thought. Accordingly, he has pointed out that the plea that students interest is the paramount consideration is nothing but an act of chasing the colourable and discriminatory exercise of power which is not sustainable in the eyes of law. As such, he has reiterated his prayer for quashing the order of transfer.

4. Arguments, with reference to the pleadings, put-forth by Learned Counsel appearing for respective parties were heard and materials placed on record were perused. By placing into service copy of the transfer policy

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guidelines of the KVS, chart showing the percentage of class XII result of KV, Angul for the sessions 2006, 2007 and 2008 and orders canceling transfer of some of the Principals it has been argued by Learned Counsel for the Applicant that it is incorrect to say that the passing percentage of the students of Class XII was 74.79%, 82.90% & 83% for the years, 2006, 2007 and 2008. This percentage has been reached by the Respondents without taking into consideration the result of supplementary examination of the students of those years and in fact, taking into consideration such results the percentage very much comes to 91.4%, 90.2% and 91.05% for the sessions of 2007, 2007 and 2008. By relying on the decision of the Hon'ble Apex Court in the case of **E.P.Royappa v State of Tamil Nadu**, AIR 1974 SC 555, he has argued that it is settled law that Articles 14 and 16 strike at the arbitrariness in State action and ensure fairness and equality of treatment. They require that action must be based on valid relevant principles applicable alike to all similarly situated and must not be guided by any extraneous or irrelevant considerations because that would be denial of equality and that where the operative reason for state action as distinguished from motive inducing from the ante chamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible consideration, it would amount to *mala fide* exercise of power and that is hit by Article 14 and 16 of the Constitution of India. While not disputing that the applicant is having all India transfer liability and transfer is an incidence of service, he has pointed out that when circumstances surrounding such an order lead to a reasonable inference by a well instructed mind that such an order was made in colourable exercise of power and intended to achieve a sinister purpose and based on irrelevant consideration, then the arms of the court can be extended so as to decipher

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the intention of the order and set it aside on the ground that it is one made with a design and motive of circumventing the mandatory procedure prescribed in Article 311 (2) of the Constitution of India. In this connection, by relying on the decision of the Hon'ble Apex Court in the case of **Syndicate Bank v The Workmen**, AIR 1966 SC 1283, Hon'ble High Court of P&H in the case of **Lachman Dass v Shiveshwarkar and others**, AIR 1967 Punjab 76 and that the decision of the Principal Bench of the CAT in the case of **K.K. Jindal v General Manager, Northern Railway and Others**, ATR 1986 CAT 304, Learned Counsel for the Applicant emphasized his stand that this being a punitive order of transfer attaching stigma, without complying with the principles of natural justice and the same having been done in gross violation/supersession of the transfer policy guidelines prohibiting any such transfer of an employee, having less than three years of service, the order of transfer under Annexure-A/2 dated 23.06.2008 is liable to be set aside.

5. On the other hand, Mr. Ashok Mohanty, Learned Senior Counsel, appearing for the Respondent-Department submitted that the transfer policy guidelines, violation of which Applicants seeks relief does not ex facie prohibit transfer of employees having three years to retire irrespective of their performance etc. His contention is 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 regard to violation of the transfer guidelines, as pointed out by the Learned Counsel for the Applicant, it was argued by the Learned Senior Counsel for the Respondents that violation of transfer guidelines cannot be a ground for quashing the order of transfer; especially when KV is an institution meant for imparting the education to the students. Further he argued that it is trite law

that Courts or Tribunal are not the Appellate Authority to decide the question of transfer of officers made on administrative grounds and interfering in the present order of transfer would seriously jeopardize the interest of the students and the institution at large. The Applicant is transferred in the larger interest of the institution which is in public interest/administrative exigency.

6. We have given our thoughtful consideration to various arguments advanced by the parties as also gone through the decisions relied on by the Applicant. The common thread running through various decisions of Hon'ble Apex Court, various High Courts as also this Tribunal that power of interference in a matter of transfer is very limited and the same is possible only when the order of transfer is made by an authority is made in gross violation of statutory and mandatory rules or is based on *mala fide* or colourable exercise of power. The transfer guidelines framed and followed by KVS merely states that transfer of an employee who has three years to retire should be avoided. It does not *ex facie* prohibit that one cannot be transferred if he or she is having three or less than three years of service. However, it is settled principle of law that guideline gives no enforceable right to an employee so as to claim quashing of the order of transfer which has been made in administrative exigency. *Prima facie*, we are satisfied that the present order of transfer is not a routine transfer but it is a general transfer order based on certain criterion where a large number of Principals are involved. Therefore, we do not intend to interfere in the order of transfer when according to the Respondents, the transfer of applicant is effected in the interest of the students and the institution at large. In view of the above, this

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Original Application is dismissed. However, there shall be no order as to costs.

7. Last but not the least, we may observe that dismissal of this Original Application shall not preclude the transferring authority i.e. Respondent No.1 to give a second consideration, if he so chooses; especially taking into consideration that the service of Applicant will come to an end 30.06.2010. In any event, the Respondent No.1 is hereby directed to allow the Applicant time till 31st October, 2008 to get himself relieved from his present place of posting. Registry is directed to send a copy of this order to Respondent No.1 by Regd. Post.

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

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

KNM/PS.