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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 48 of 2009
Cuttack, this the 21st day of May, 2010

C.Venkateswarlu 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?

(M.R.MOHANTY)
VICE-CHAIRMAN

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

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O.A.No.48 of 2009
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C O R A M:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....

C.VENKATESWARLU, aged about 54 years, PGT (English),
Jawahar Navodaya Vidyalaya, At/Po.Surangi, Dist. Ganjam.
.....Applicant

Legal practitioner :M/s.R.P.Mohapatra

Prabhanjan Pradhan

Miss.Dipali Mohapatra

Counsel.

- Versus -

1. Navodaya Vidyalaya Samiti, represented by its Commissioner, A-28, Kailash Colony, New Delhi-110048
2. Joint Commissioner (Personal), Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi-110048
3. Assistant Commissioner (East), Navodaya Vidyalaya Samiti, A-28, Kailash Colony, New Delhi-110048.
4. Deputy Commissioner, Bhopal Region, Navodaya Vidyalaya Samiti, 160-Zone-II, M.P.Nagar, Bhopal, Madhya Pradesh.
5. Deputy Commissioner, Hyderabad Region, S.P.Road, Near Municipal Corporation Swimming Pool, Sikandarabad-3.

....Respondents

Legal Practitioner :Mr.S.B.Jena, ASC

O R D E R

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

Applicant's contention is that although he belongs to Hyderabad Region, for no fault as would be reflected from the order under Annexure-3, dated 06.01.2004, he was transferred to JNV, Katihar Bihar. He challenged the said order of transfer before the Hyderabad Bench of the Tribunal in OA No.701/2004.

The Hyderabad Bench of the Tribunal, in order dated 25.6.2004,

disposed of the matter with direction to Respondent No.1 to consider the representation taking into consideration the recommendation made by the Respondent No.4 in Annexures-4&5. On being relieved from Hyderabad Region he joined at Katihar but soon thereafter he was transferred to Buxar vide order under Annexure-7. His stand is that despite the fact that applicant being a TGT has no all India transfer liability and in the face of the provision at clause 6 (c) of the transfer policy Respondents vide letter under Annexure-8 dated 5.11.2004 allowed the applicant to retain his seniority in the new region. Applicant requested through representation under Annexure-9 to post him back to his parent region i.e. Hyderabad but instead of transferring him to his parent region he was transferred and posted to Bhopal Region at Ganjam in which place he is working since 2005. Based on the existing seniority, the applicant was permitted to appear at the test for promotion to TGT. After lapse of three years vide order under Annexure-12 dated 20.06.2008, the applicant was informed that as his transfer to Bhopal region was on his own request, his seniority cannot be protected. Being aggrieved by the said decision applicant made representation stating that either he should be posted back to his parent region or if it is not possible then his transfer and posting to Patna Region at Buxer should be modified to Bhopal Region at Ganjam

so that he will retain his seniority which was rightly protected by treating his transfer to Patna Region on administrative ground. According to the applicant, due to non-consideration of his request in proper perspective he has been deprived of his promotion even after being successful in the selection and also the seniority, although he did not furnish his option to be posted at Bhopal Region. That on his transfer to Bhopal Region he has to lose his seniority, was neither a condition stipulated in the order transferring him to Bhopal region nor this had ever been pointed out to him in compliance with the principle of natural justice. Hence by filing this Original Application under section 19 of the A.T. Act, 1985, the applicant seeks the following relief:

“.....to allow this application by directing the Respondents to count the service of the petitioner from the date of his initial appointment and his seniority be protected accordingly and he may be promoted from the post of TGT to PGT and further be pleased to quash Annexure-12, 17 and 18.

2. Factual aspects of the matter are not in dispute. It has been contended by the Respondents in their counter that the applicant belongs to Hyderabad Region. He being a TGT does not hold All India Transfer liability. As per sub clause (c) of clause 6 of transfer policy of the Vidyalaya, in the event of an inter-regional transfer in the category of TGTs, Miscellaneous categories of teaches and non-teaching staff i.e. UDC and below

16 who are not of All India cadre, the employee concerned will be placed at the bottom of the seniority list of the relevant year in the relevant cadre in the region to which he is transferred. The applicant's transfer being an inter regional transfer on own request from Patna to Bhopal Region, he has no right to claim retention of his seniority at Bhopal Region. While denying the allegations made by the applicant in the Original Application, the Respondents have submitted that the applicant having accepted the transfer, fully knowing about the consequences attached to it, he is estopped under law to claim seniority. Accordingly, Respondents opposed the contentions of the Applicant and have prayed for dismissal of this Original Application.

3. Ms. Subhasree Mohanty, Learned Counsel appearing for the Applicant and Mr. S.B.Jena, Learned Additional Standing Counsel for the Union of India appearing for the Respondents have reiterated the stand taken in their respective pleadings and having heard them at length, perused the materials placed on record.

4. It is trite law that seniority though not a fundamental right is a civil right (**R.K.Mobisana Singh v K. T. Singh and others**, (2008) 1 SCC (L&S) 315). As such deprivation of such right must be in compliance with the principles of natural justice. It is the case of the Respondents that as per the

provisions made in the transfer policy in case of transfer in public interest from one region to another, there is no question of loss of seniority whereas in the event of transfer taking place on own request, the employee concerned has to lose the seniority. It is the positive case of the Applicant that his transfer from Hyderabad Region to Patna Region was due to an allegation relating to migration issue, which on enquiry was found to be unsubstantiated against the applicant. Subsequently he approached the Hyderabad Bench challenging his order of transfer and on the direction of the Tribunal his representation against the transfer was considered and he was posted to Katihar under Patna Region. His request and option was to be posted to Hyderabad Region which was his parent unit. As there was no vacancy available at Hyderabad Region, Applicant, on counseling, was posted to Bhopal Region at Ganjam. Respondents have placed no materials to show that the posting of the applicant at Ganjam (Bhopal Region) was as per his own request foregoing his seniority. No document has been produced by the Respondents that the condition of loss of seniority was made known to the applicant prior to posting him to Bhopal Region nor we find any such condition in the order of transfer. If the applicant does not hold All India Transfer Liability, we find no justification how in exercise of administrative power the authority can transfer the

applicant from one Region to another. Further it is seen that exercise of power in transferring the applicant from Hyderabad Region to Patna Region is beyond competence, jurisdiction and authority. Transfer made on allegation has been held to be bad in law. Besides it is trite law that an executive power in absence of any statutory rules cannot be exercised if the same results in civil or penal consequences.

5. Further in the case of **Canara Bank and others v Debasis Das and others**, (2003) 4 SCC 557=2003(3) SLR 64 (SC) in paragraph 13 at page 570 the Hon'ble Apex Court held as under:

“The adherence to principles of natural justice as recognized by all civilized states is of supreme importance when a quasi judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and for most principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice.

Any rule which has been issued on administrative side which has an effect of causing Civil Consequences, upon a Government servant; whether it may be termination or any other adverse order punitive

in nature which acts adversely to a Government servant, the sine qua non of such action is accord of prior reasonable opportunity to show cause. Any rule which does not contains safeguard of principles of natural justice is deemed to have implicitly violated the cardinal principle of Audi Alteram Partem – **J.A.Naikstam v Protonotary Senior Master** – 2005 (2) SLJ (SC) 28.”

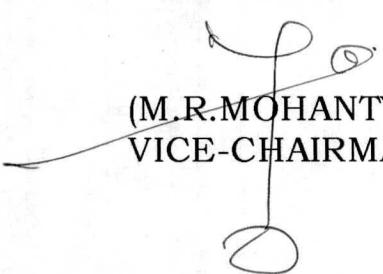
6. It is the specific case of the applicant that he has opted for his posting to his parent Region but there being no vacancy, according to the Respondents with the consent of applicant he was transferred and posted to Bhopal Region at Ganjam. But had he been transferred to Hyderabad Region or had he been retained at Patna Region, he would have got his promotion. But for the transfer to Bhopal Region now the applicant has been deprived of his promotion and seniority as well. This amounts to imposing double punishment without any fault of the applicant or without following rigors of the Rules/natural justice. This is not only a sheer case of injustice but also an action bordering on deceit. It is trite law that an employee on transfer even to a new department may not get seniority but his experience in past service counts for other benefits like promotion and higher pay scale. As observed by this Tribunal in very many cases in the past, the role of teachers is central to all processes of formal education. The teacher alone could bring out the skills and intellectual capabilities of students. If a teacher is meted out such treatment

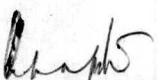
so far as his personal problem is concerned then it is futile to expect the desired level of performance from him. Therefore, the authority dealing with the grievance of teachers ought to show absolute diligence and sincerity so as to enable the teachers to put their best in the profession. We are constrained to observe the above because it is noticed that the exercise of power of transfer from one region to another is beyond the competence and jurisdiction of the authority. When according to the Respondents the applicant does not hold the post having all India transfer liability, he ought not to have been shifted from Hyderabad to Patna. Clause 1 of the revised transfer policy copy of which is filed at Annexure-R/1 dated 12.4.1999 gives power to the competent authority to transfer an employee on administrative grounds/public interest. This means one can be transferred from one station to the other within the same region but certainly not from one region to another. Therefore, very utilization of the power by the authority in transferring the applicant from Hyderabad Region being beyond the competence is a nullity. However, on his transfer he was allowed to retain the seniority at Patna Region. Accordingly he was allowed to participate in the positive act of selection through which he was selected. Meanwhile, he was transferred to Bhopal Region, according to the Respondents on the willingness of the applicant.

But that willingness of the applicant if at all furnished by him cannot be taken to be on his own volition but on compulsion. This is a novel way of legalizing the illegality committed by the authority in transferring the applicant on the so called 'own request'. Be that as it may, we find no material that the applicant had ever been made conscious about the loss of seniority while posting him at Bhopal Region in the first instance. Had the applicant not been transferred from Hyderabad Region, the present controversy would not have arisen. Applicant had opted to go to his parent Region, i.e. Hyderabad. If in the counseling he agreed to go to Bhopal Region the authority, in compliance of the principles of natural justice, should have given him in writing that he should furnish an undertaking to accept the bottom seniority in the Bhopal Region. This condition is conspicuously absent in the order of transfer itself. Applicant made representation in connection with retention of his seniority. If it was not found feasible, the Respondents ought to have taken him either to his parent Region i.e. Hyderabad or should have retained him in his earlier place of posting. Besides, the action of the respondents is also in violation of the principles of natural justice. It is a fact that on his interregional transfer the Respondents themselves allowed the applicant to retain his seniority while the same dispensation was denied in the Bhopal

Region on the plea of so called option transfer. This cannot be countenanced in law and logic. Consequently, the order rejecting his claim, for retention of seniority in Bhopal Region, is not sustainable and, therefore, the orders under Annexure-A/12, A/17 & A/18 are hereby quashed. Resultantly, it is held that the Applicant is entitled to retain his seniority in the Bhopal Region as a continuation of his service at Patna Region. The Respondents are directed to assign the applicant his place and position in the seniority list of TGT (English) at Bhopal Region adding the entire period spent on duty since his date of joining at Hyderabad Region as has been conceded vide Annexure-8. Accordingly, the Respondents shall grant him all consequential service benefits including promotion which the Applicant is entitled to under the rules within a period of 60(sixty) days from the date of receipt of this order.

7. With the aforesaid observations and directions, this OA stands allowed. There shall be no order as to costs.


(M.R.MOHANTY)
VICE-CHAIRMAN


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