

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O.A.NO.: 221 OF 2006 July
 [Patna, this Thursday, the 13th Day of June, 2006]
 A.G.

C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.
 HON'BLE SHRI SHANKAR PRASAD, MEMBER [ADMN.]

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 Shyam Nandan Roy, son of Shri Ramadhar Roy, resident of K.V. IOC Barauni, Q.N. E-4/23, RTS, Begusarai, permanent resident of P.O.: Dhanchhuhan, District – Arrah [Bhojpur], Bihar. APPLICANT.

By Advocate :- Shri Gautam Bose.
 Shri Vikash Jha.

Vs.

1. The Union of India through the Commissioner, Kendriya Vidyalaya Sangathan, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
2. The Joint Commissioner [Administration], Kendriya Vidyalaya Sangathan, New Delhi.
3. The Assistant Commissioner, Kendriya Vidyalaya Sangathan, Regional Office, Kankarbagh, Patna.
4. The Education Officer, Kendriya Vidyalaya Sangathan, 18, Institutional Area, Shaheed Jeet Singh Marg, New Delhi.
5. The Principal, Kendriya Vidyalaya, Chabua, District : Chabua, Assam.
6. Mrs. Shanti Tigga, wife of Mr. Niranjan Tigga, the then Principal, Kendriya Vidyalaya, I.O.C., Barauni, at present posted at K.V, H.F.C. Barauni [Bihar]. RESPONDENTS.

By Advocate :- Shri G. K. Agarwal, ASC.

O R D E R

Justice P. K. Sinha, V.C.:- This application is for quashing of Annexures-A/1 & A/2 through which the applicant, who was working as TGT [Hindi], Kendriya Vidyalaya [for short, KV] at IOC, Barauni was transferred to KV at



Chabua in public interest which place is in the North-East Region.

2. The brief history may be stated.

3. After his transfer order at Annexure-A/2 the applicant had moved this Tribunal in OA 709 of 2005 for quashing the transfer order on the grounds mentioned therein. But in that application the applicant had made an alternative prayer that otherwise he be allowed to remain at KV, IOC Barauni till his daughter appeared in Class XII examination whereafter the respondents might transfer him anywhere in India except the North-East Region. That application was disposed of by order dated 18.11.2005 in which, noticing that a representation of the applicant was pending before the Joint Commissioner, Kendriya Vidyalaya Sangathan, New Delhi, a direction was given to him to dispose of the pending representation and to take a decision upon the same including on the alternative prayer of the applicant as made in Annexure-A/7 [the representation].

4. Pursuant to the aforesaid direction of this Tribunal the respondents considered the representation and allowed the applicant to be retained at KV, IOC till his daughter's examination was over and thereafter to report for his duty at Chabua on 31.03.2006. This order also stated - "His case will be considered for transfer as per new transfer guidelines on 14.03.2006."

5. Now the daughter's examination is over and the applicant again has come up before this Tribunal against his transfer order stating that if he is to be, in the alternative, transferred to a new place, the same be considered as per Annexure-A/1. The plea is that the authorities may decide that point in his representation if he is to be transferred somewhere else [except in the North-



East Region] without insisting on the formality of complying with the previous order by first joining at Chabua. This submission is also made in context with Annexure-A/9 which is the speaking order passed by the Joint Commissioner [Administration] pursuant to order of this Tribunal in OA 709 of 2005 in which following was stated - "Whereas his representations dated 08.11.2005 & 21.11.2005 have been examined sympathetically by the competent authority and decided to permit him up to his daughter's examination is over, after that his case can be considered for modification on merit on the available vacancies at his choice place as per rules."

6. The new transfer guidelines for the KV staff were made applicable w.e.f. 14.03.2006 which is at Annexure-A/11. Clause 9 deals with the guidelines for effecting administrative transfer to, and out of, priority areas. This states that a male teacher will have one tenure posting in priority areas before completion of 35 years of age. One of the priority areas is North-East Region [except its very Hard Stations] and Hard Stations elsewhere. For such a posting the minimum tenure was three years of posting. Learned counsel pointed out that the applicant on 22.08.1995 was appointed as TGT and posted at KV at Kailash in North-East Region. Thereafter from 1998 to 2000 he had worked at KV, Khatkhati also in North-East Region, whereafter he was transferred to Ranga Pahar also in North-East Region and, thereafter, he had joined at KV, IOC, Barauni in April, 2002. Learned counsel submitted that having posted in the North-East Region for such a long period after his appointment, he made a prayer for his transfer elsewhere and through certain annexures also gave some choice places where he requested his posting.



7. The learned counsel for the respondents submits that a transfer order stands in the case of the applicant and he should join at his place of transfer, whereafter if he represents for his transfer to another station, that will be considered in accordance with the existing policy.

8. The argument of the learned counsel for the applicant is that whereas through Annexures A/9 & A/10 it has been made clear that his prayer for being transferred to some other station would be considered after his joining at Chabua, the authorities be directed not to insist on the formality of his joining at Chabua as condition precedent for his transfer to some other station, as that would unnecessarily involve personal harassment to him who will have to move with bag & baggage and family to Chabua and if he is then transferred elsewhere, he would again have to move to yet another place, again with bag & baggage and family which would also effect the educational career of his children and involve unnecessary expenditure either to be borne by him or by the KVS.

9. The Courts and Tribunals generally do not interfere with the transfer orders unless a good case for such interference is made out. The respondents have made it clear that they were open to consider his prayer for his transfer elsewhere, even to a place of his choice [Annexure-A/9], hence that part of representation of the applicant has remained unanswered. If the respondents are ready to consider that part of his representation, or his prayer in the earlier OA, then this insistence on his first joining at Chabua, is simply not understandable. It could have been understood if the representation was outrightly rejected, giving relief to him to stay only till the examination of his



daughter was over, but keeping a part of the prayer of the applicant in animated suspension, insisting of his first joining at Chabua as *sine qua non* for another posting does not appear to be reasonable.

10. So far some other representations with places of choice are concerned, the respondents may consider that but posting at a choice-place cannot be insisted upon by the applicant when in the last OA he had made a clear alternative prayer that after examination of his daughter he could be posted anywhere in India except in North-East Region. Having made that alternative prayer, the applicant can hardly insist on his posting to a certain choice-place, though that may be considered by the respondents, if they so want.

11. In our opinion, the condition precedent that before his prayer for posting elsewhere is considered he should join at Chabua should not be insisted upon by the respondents, in the circumstances discussed above.

12. We are of the opinion that instead of insisting upon that, the respondents should consider his alternative prayer, which consideration they have kept open relating to his posting anywhere in India except in the North-East Region.

13. In the result, this application is allowed to the extent that the condition that he should join at Chabua whereafter his prayer for posting elsewhere may be considered as per new transfer guidelines, is set-aside. The respondents are directed to consider the representation of the applicant filed before the authorities, also considering this application to be a representation and to take a final decision as to whether the applicant should be transferred



anywhere in India except North-East Region. This decision will be taken within a month of receipt of a copy of this order with a copy of the application.

14. The applicant is also directed to make available a copy of this order along with a copy of the application with its annexures to the respondent no.2 [the Joint Commissioner (Admn.),KVS, New Delhi] within ten days of receipt of the certified copy of this order. If the applicant stands relieved, but is transferred elsewhere on reconsideration of the matter, the respondent no.2 will also consider as to how to regularise the interregnum period such as by allowing admissible leave to the applicant.

15. With the aforesaid directions, this application is disposed of.

No costs.


[Shankar Prasad]/M[A]

skj.



[P.K.Sinha]/VC