

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. O.A. 351/378/2018

Date of Order: 20.03.2018

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Dr. R. Dev Das, son of late P. Raman Pillai, aged about 56 years, by occupation Service as Principal, GSSS Manglutan under the Directorate of Education, Andaman & Nicobar Administration, Port Blair, residence at S-3, Sunrise Apartments, Dudhline, Shadipur, Port Blair- 744101.

.....Applicant.

-vs-

1. The Andaman & Nicobar Administration, Service through the Lt. Governor, A&N Islands, AJ NIVAS, Port Blair- 744101.
2. The Secretary of Education, Andaman & Nicobar Administration, Secretariat, Port Blair- 744101.
3. The Director of Education, Andaman & Nicobar Administration, Directorate of Education, VIP Road, Port Blair- 744101.
4. The Deputy Director of Education (Academic/HOO), Andaman & Nicobar Administration, Directorate of Education VIP Road, Port Blair- 744 103.
5. Shri Shubhankar Ghosh, holding the Additional charge of the post of Director Of Education, Andaman & Nicobar Administration, Directorate of Education, VIP Road, Port Blair- 744 103.

.....Respondents.

For the Applicant : Mr. S. Samanta, Counsel
Mr. P.K. Mondal, Counsel

For the Respondents : Mr. S.K. Ghosh, Counsel

[Signature]

ORDER (Oral)

Per Ms. Manjula Das, Judicial Member:

Heard Mr. S. Samanta, leading Mr. P.K. Mondal, learned counsel for applicant and Mr. S.K. Ghosh, learned counsel for respondents.

2. The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"8(a) An order be passed setting aside the impugned order of transfer dated 13.03.2018 of the applicant being Annexure "A-2" hereto and all further actions in pursuance thereto and thereupon further orders be passed directing that the applicant continue in his present place of posting.

(b) Injunction do issue restraining the respondent authorities from acting in any manner or any further manner on the basis of the impugned order of transfer dated 13.03.2018 of the applicant being Annexure "A-2" hereto and/or releasing the applicant from his present place of posting.

(c) A direction do issue upon the respondents to produce and/or cause to be produced the entire record relating to the case and upon such production being made to render reasonable justice by passing necessary orders.

(d) Cost and costs incidental thereto.

(e) And/or to pass such other or further order or orders as to your Lordships may seem fit and proper."

3. The brief fact of the case as narrated by the Id. Counsel for the applicant is that the applicant while holding the post of Lecturer (HOD) in Geography was selected through UPSC and appointed as Principal of Senior Secondary School w.e.f. 01.07.1999. Thereafter, he served in various capacities in various places in Andaman & Nicobar Islands. In July, 2017 the applicant was posted as Principal, GSSS, Manglutan and he joined his duties without prejudice to his rights and contentions but also preferred representation for appropriate posting. He followed up the same with further representation in January, 2018 for posting as



Director Education considering his no. 1 seniority. The said representations have remained unanswered.

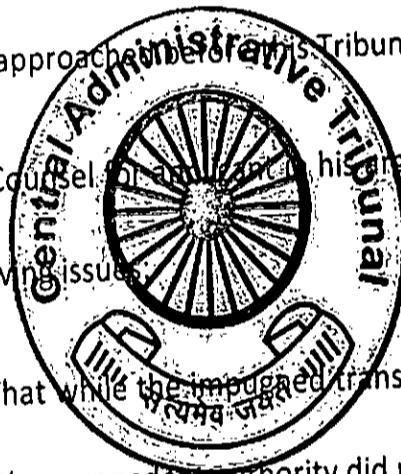
After 31 years of service of the applicant in different places, the respondent authority issued the impugned transfer order dated 13.03.2018 whereby the applicant has sought to be transferred from his present place of posting as Principal, GSSS Manglutan to SSS Teresa, Nicobar District, where there is no post as also under his juniors, having once served there as Education Officer for three years and a further stint of three months after sunami as Assistant Director of Education (Planning) for rehabilitation and restarting of the schools. According to the applicant the impugned transfer is a product of malice in law and malice in fact. Hence, he approached this Tribunal for redressal.

4. Mr. S. Samanta, Id. Counsel, on behalf of the applicant, in his arguments inter alia amongst other advanced the following issues:

(i) That while the impugned transfer order dated 13.03.2018 was issued, the respondent authority did not at all follow the transfer guidelines in terms of Circular dated 30.07.2007 where the tenure of posting has been provided.

(ii) That the previous posting of the applicant at SSS Manglutan as Principal GSSS vide order dated 21.07.2017 and only after 7 months of service he has been again sought to be transferred from SSS Manglutan, Zone-V to SSS Teressa, Zone-I.

(iii) That the applicant sought to be transferred from SSS Manglutan to SSS Teressa against non-sanctioned post and his salary



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shall be drawn against the sanctioned strength of Principals SSS Champin on production of duty certificate.

(iv) That after the retirement of Dr. Suman Devi, the applicant is the senior most officer in the post of Principal/DEOs/DD(AE)/Lecturer(SIE) etc. as on 28.02.2017. However, if he joins there he shall have to draw his salary from the other station i.e. from SSS, Champin which is controlled by one Vice Principal Sri Prabesh Kr. Mondal, that too on production of duty certificate. As such the impugned transfer order is in violation of the established principle of service jurisprudence.

Pertinently, Shri Prabesh Kr. Mondal against Sri. No. 24, Vice-Principal who has been transferred and posted to SSS Champin and if the transfer order is effected, the salary of the applicant ought to be drawn from the Office of the Vice-Principal, SSS Champin that too by production of duty certificate.

5. As such in view of the foregoing paragraphs, at any circumstances the applicant ought not to have been posted under any of his junior of School which is under control and jurisdiction of Deputy Education Officer who is the junior most Vice-Principal and much below in the seniority list.

6. Therefore, from the above it is apparently established that the principle of service jurisprudence has not been honoured by the authority while the applicant is sought to be transferred by vide impugned order dated 13.03.2018.

7. It was further submitted by the Id. Counsel for applicant that the applicant did make representation on 14.03.2018 before the Lt. Governor i.e. Respondent No. 1, however, there is no response.

8. Mr. S.K. Ghosh, learned counsel appearing on behalf of the respondents submits that the impugned transfer order of the applicant along with others is a routine transfer, moreover, the applicant have already continued for 25 years in the same Zone. As such, there is no illegality or irregularity in issuing the transfer order.

9. We have heard both the parties, perused the pleadings and materials placed before us.

10. In the present application, we have noted that so many issues have been raised by the applicant where the Id. Counsel, Mr. Samanta appearing on behalf of the applicant pointed out the issues both legal and factual aspects as mentioned in the foregoing paragraphs. At the same time, we cannot ignore that the applicant has already made a representation dated 14.03.2018 before the Respondent No. 1 i.e. the Governor, PWD Administration with a request for posting as Director, Education, being senior post in the cadre by withdrawing the instant transfer order dated 19.03.2018 under Order No. 576.

Thus, there is twofold prayer made before the Respondent No. 1, which is still pending.

11. We are of the opinion, that it would be deemed fit and proper if the applicant shall make a comprehensive representation before the Respondent No. 2 i.e. Secretary, Education highlighting his grievances to the impugned transfer order where the Id. Counsel is agreed to.

12. Therefore, without going into the merits of this case, we direct the applicant to make a comprehensive representation ventilating his grievances before the Respondent No. 2 within a period of 2 weeks from the date of receipt



of the order. On receipt of such representation, the Respondent No. 2 shall consider and dispose of the representation, proposed to be made by the applicant by keeping in mind the transfer guidelines as well as the other aspects if so raised, within a period of 2 months thereafter by affording opportunity of being heard.

13. It is made clear that the decision so arrived shall be communicated to the applicant forthwith.

14. Meanwhile, the impugned transfer order dated 13.03.2018(Annexure A-2 to the OA) shall be kept in abeyance so far as the applicant is concerned till the decision so arrived, passed and intimated to the applicant.

15. With the above observational directions, OA stands disposed of. No order as to costs.

(Dr. Nandita Chatterjee)
Member (A)

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(Manjula Das)
Member (J)