

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00374/2018

Date of Order: This, the 12th day of November 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

Smti. Mitali Deka Baruah
Senior Secretariat Assistant
J.N.V., Udmari, Darrang
District – Darrang, Assam, Pin – 784525.

...Applicant

By Advocate: Mr. G. Baishya

-Versus-

1. The Union of India
Through the Secretary, Government of India
Ministry of Human Resource Development
Department of Education, New Delhi – 110001.
2. The Commissioner
Navodaya Vidyalaya Samity
Institutional Area, Sector-62, Noida
Uttar Pradesh – 201307.
3. The Deputy Commissioner
Navodaya Vidyalaya Samity
Regional Office, Temple Road
Barik Point, Lachumiere, Shillong – 793001.
4. The Principal, J.N.V., Udmari, Darrang
District – Darrang, Assam, Pin – 784525.

...Respondents

ORDER (ORAL)**MANJULA DAS, JUDICIAL MEMBER:**

Being aggrieved with the Final Transfer List (Round 01 & 02) of Annual Transfer Drive, 2018 in respect of Upper Division Clerk published by the respondent authority, the instant petition has been preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking following main reliefs:

- “8.1 That the Hon'ble Tribunal be pleased to set aside and quash the Final Transfer List (Round 01 & 02) of Annual Transfer Drive, 2018 in respect of Upper Division Clerk published by the respondent authority and the Order dated 29.10.2018 vide which the pending representation of the applicant has been disposed of without any relief.
- 8.2 That the Hon'ble Tribunal be pleased to direct the respondent authorities to allow the applicant to continue her service in her present place of posting i.e. JNV, Darrang, Assam till the academic session of her daughter is completed.”

2. Heard Mr. G. Baishya, learned counsel for the applicant. Perused the pleadings and the documents relied upon.

3. It was submitted by Mr. Baishya that the applicant is working as Senior Secretariat Assistant in JNV, Darrang, Assam. She was initially appointed as Lower Division Clerk in JNV, Darrang, Assam vide letter dated 02.08.1996 and accordingly, she joined on 09.08.1996. Thereafter, the applicant was promoted to Upper Division Clerk vide order dated 04.05.2007 and she joined on 17.05.2007 and since then, she has been working in the said Vidyalaya. As the applicant has completed her normal tenure in the present place of posting and the husband of the applicant is a State Govt. employee, she had applied for request transfer in JNV, Baksa, Assam under the Transfer Drive, 2018 under spouse ground. But the respondent authority without accommodating the applicant in her choice place of posting, has sought to be transferred to JNV, Sought Garo Hills, Meghalaya by accommodating one incumbent namely Sri Hiranya Bora in JNV, Baksa, Assam. While transferring the applicant to South Garo Hills, Meghalaya, the respondent authorities failed to consider the fact that the only daughter of the applicant is studying in Class-XII (Science Stream) in the same Vidyalaya where the applicant has been working. According to Mr. Baishya, the transfer of the applicant during mid academic session will affect the study of her daughter.

4. Being dissatisfied with the with the action, the applicant submitted a representation on 06.07.2018 before the authority by stating all the grievances and requested the authority to cancel the transfer from Darrang to South Garo Hills, Meghalaya and allow the applicant to continue her service in JNV, Darrang, Assam. Since the said representation was not considered, the applicant finding no alternative, approached this Tribunal vide O.A. No. 040/00235/2018 and this Tribunal vide order dated 13.07.2018 disposed of the said O.A. by directing the respondent authority to adjudicate the pending representation of the applicant within period of four months from the date of receipt of the order with further direction to the respondent authority not to disturb the applicant from her present place of posting at JNV, Darrang, Assam.

5. According to Mr. Baishya, the respondent authority without considering the case of the applicant, has published the Final Transfer List on 13.08.2018 by transferring the applicant to JNV, West Kameng, Arunachal Pradesh by modifying the Proposed Transfer List. After publishing the Final Transfer List, the authority has also passed a speaking dated 29.10.2018 in

compliance of the order passed by this Tribunal dated 13.07.2018 and has disposed of the pending representation of the applicant without any relief.

6. Having heard the learned counsel for the applicant, perusal of the pleadings and material placed on record, it is noted that earlier also, present applicant had also approached this Tribunal by filing O.A. No. 040/00235/2018 and this Tribunal vide order dated 13.07.2018 disposed of the said O.A. at the admission stage and observed as hereunder:

“7. In view of the above, without going into the merits of the case and for the ends of justice, I direct the respondents to dispose of the pending representation of the applicant dated 06.07.2018 and pass a reasoned and speaking order keeping in mind the Transfer Policy dated 04.04.2012 of the Navodaya Vidyalaya Samiti and the fact that her daughter is studying in Class-XII.

8. It is needless to mention that the representation shall be disposed of by the respondent authorities within four months from the date of receipt copy of this order and whatever decision is taken thereto shall be communicated to the applicant forthwith. Till then, applicant shall not be disturbed from her present place of posting, that is, JNV, Darrang, Assam.”

In compliance with the order dated 13.07.2018 passed by this Tribunal in O.A. No. 040/00235/2018, the respondents have issued the impugned order dated 29.10.2018 has rejected the

claim of the applicant by modifying the transfer from JNV, South Garo Hills to JNV, West Kameng, Arunachal Pradesh.

7. Since the applicant is a female employee, it will be difficult for her to stay alone in such a remote area by leaving her husband and daughter alone. It is also a fact that the daughter of the applicant is studying in Class-XII in the Vidyalaya at Darrang where the applicant has been working and transfer of the applicant during mid session will affect the study of the daughter and not permissible in view of the ratio laid down by the Hon'ble Apex Court rendered in the case of **Director of School Education, Madras & Ors. Vs. O. Karuppa Thevan 1994 Supp (2) SCC 666** where the Hon'ble Apex Court has held that – "Transfer of an employee during mid-academic term is not proper unless exigencies of service are urgent for making such transfer."

8. On query to the learned counsel as regards to join in any new place, Mr. Baishya submitted that applicant may be retained in the present JNV, Baksa, Assam, till the mid academic session of the ward of the applicant is over. It is also evident that the said prayer has also been made by the applicant in para 8.2 of the relief portion.

9. In view of the above, I direct the respondent authority to retain the applicant and allow her to continue her service in present place of posting i.e. JNV, Darrang, Assam till academic session of her daughter is completed.

10. O.A. stands disposed of at the admission stage itself.

No order as to costs.

(MANJULA DAS)
MEMBER (J)

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