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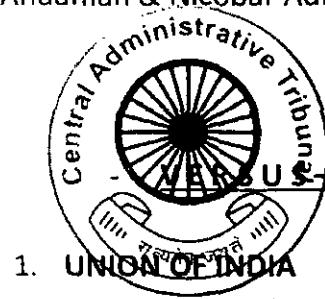
OA No.1142 /AN/2018

Dated: 16.11.2018

**Coram :** Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Ms Nandita Chatterjee, Administrative member.

**Smt. MANIMALA HALDER,**

Wife of Dr. R. K. Halder, aged about 56 years, residing at Link Road, Quarter No. Type-V/9, Port Blair- 744101, and presently working to post of Vice-Principal, Government Senior Secondary School, Shoalbay under the Director of Education, Andaman & Nicobar Administration, Port Blair.



..... **APPLICANTS**

1. **UNION OF INDIA**

service through the Secretary, Government of India, Ministry of Human Resources Development, Shastri Bhawan, New Delhi- 110001.

2. **THE LIEUTENANT GOVERNOR,**

Andaman & Nicobar Islands, Raj Niwas, Port Blair-744101;

3. **THE CHIEF SECRETARY,**

Andaman & Nicobar Administration, Secretariat Complex, Port Blair-744101;

## 4. THE PRINCIPAL SECRETARY(EDUCATION),

Secretariat, Andaman & Nicobar  
Administration, Port Blair-744101;

## 5. THE SECRETARY -CUM-DIRECTOR(EDUCATION),

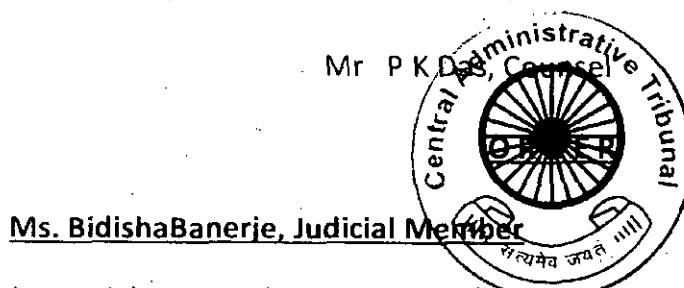
Secretariat, Andaman & Nicobar  
Administration, Port Blair-744101;

....RESPONDENTS

For the Applicant: Mr P C Das, Counsel;

Ms T Maity, Counsel

For the Respondents: Mr R Halder, Counsel



1. LD. Counsels were heard, materials on record and written notes of arguments were perused.
2. Aggrieved with her transfer from Zone V to Zone I, the applicant has come up with this OA in order to seek the following reliefs :

- a) To quash and/or set aside the impugned speaking order No.1877 dated 15<sup>th</sup> July,2018 issued by the Director (Education), Andaman and Nicobar Administration, whereby and whereunder the claim of the applicant has been rejected on the ground which is not at all sustainable in the eye of law being Annexure A-10 of this original applicant along with relieve order if any issued by the respondent authority in the meantime.
- b) To quash and/or set aside the impugned transfer order being No.576 dated 13<sup>th</sup> March,2018 issued by the Andaman & Nicobar Administration in respect of the applicant whose name appeared at Serial No.41 by not considering her posting at Port Blair by transferring her from Senior Secondary School, Shoalbay -12,Zone-V to Senior Secondary School, Gandhi Nagar, Zone-1 by not considering her transfer either at Port Blair

or Rangat being Annexure A-5 of this original application.

- c) To pass an appropriate order directing upon the respondent authority to modify the impugned transfer order being No.576 dated 13<sup>th</sup> March,2018 issued by the Andaman & Nicobar Administration in respect of the applicant whose name appeared at Serial No.41 that in respect of transferring her from Senior Secondary School, Shoalbay -12,Zone-V to Senior Secondary School, Gandhi Nagar, Zone-1, the applicant may be transferred in any school as Vice-Principal either at Port Blair or Rangat;
- d) To pass an appropriate order directing upon the respondent authority that in terms of the transfer policy notified vide gazette notification dated 11<sup>th</sup> July,2014 under Column-(xii) since your applicant has already crossed the age of 55 years, now at present she is 56 years of old, therefore, she may be considered for her desired place of posting either at Port Blair or Rangat;
- e) To pass an appropriate order directing upon the respondent authority to carry out the mandatory office memo dated 30<sup>th</sup> September,2009 issued Department of Personnel & Training by posting your applicant with her husband at the same station i.e. at Port Blair because both of them are central government employees under the same Administration being Annexure A-1 of this original application;
- f) Costs;
- g) Any other relief or reliefs as Your Lordships may deem fit and proper.'

3. What emerge from the written arguments is that the respondents have resisted , dispelled and controverted the claim for retention on the following grounds interalia :

- (i) *It is not res integra that Tribunal should not ordinary interfere in the executive orders like order of transfer. The order of transfer can be interfered but only in exceptional cases if the same smacks of malafides or has not been passed by an appropriate authority or it is against any statute.*

To that effect the following decisions have been cited:

**State of U.P. Vs Gobardhan Lal, (2004) II SCC 402** where Hon'ble Supreme Court reinforced such legal proposition in the following words :

*"It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guideline for*

regulating transfer or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as notice supra, shown to be vitiated by *mala fides* or is made in violation of any statutory provision.

A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts of Tribunals as though they are Appellate Authorities over such orders, which could assess the necessities of the administrative needs and requirements of the situation concerned. This is for the reason that the Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of *mala fide* when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration born out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

**Shilpi Bose (Mrs) v. State of Bihar** (1991) 1 Supp (2) SCC where Hon'ble Supreme Court held as follows :

"In our opinion, the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer order are made in violation of any mandatory statutory rule or on the ground of *mala fide*. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. The transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

(ii) the Transfer Guidelines dated 5<sup>th</sup> December,2014 as applicable to the Applicant, under previous Guideline in sub-para 2(xii) it was noted that, "Teachers who attained age of 55 years or above shall be considered for their desired place of posting as far as possible subject to availability of vacancy." That the above said Transfer guidelines dated 5<sup>th</sup> December,2014 and thus the older one became obsolete and invalid. The guidelines dated 5<sup>th</sup> December,2014 also specified the same provision at Sub-Para 2(xvi), however in a revised form and the same reads as :

"Teachers who attained age of 55 years or above shall be considered for their desired place of posting as far as possible subject to the following conditions:

- a) Those who have already served the prescribed tenure at least in four Zones and with service of prescribed tenure in any one of the hard Zones namely Zone I, II & III.
- b) Those whose children may be studying in class XII in Port Blair area or respective stations of their posting.
- c) Genuine request desired posting on medical grounds, subject to written recommendations of Medical Board.
- d) Those who have already crossed 59 years of age and are retiring within the academic session itself and transferring them at mid-way of the session may not be in the public interest, apart from causing additional burden on Govt. in the shape of transfer TAs claim.

That as per clause 2(xvi)(a) the applicant herein has completed her tenure in four zones namely Zone- II (Car Nicobar), Zone -IV (Middle Andaman), Zone- V (Port Blair Outside Municipal area) and Zone- VI (Port Blair Municipal area), however she has never served in any hard area within in the Zones-I, II & III.

4.

- (i) The admitted position that emerges from the pleadings is that the applicant is entitled to be considered in view of the guidelines and
- (ii) she has served 4(four) years in her entire service span and there it is not a case that she never moved out of Port Blair, and
- (iii) She has served Zone II for a full term and, therefore, the respondents are wrong in assuming that "she has never served in any hard area". Her case has been rejected on that score and, therefore, with total non application of mind.
- (iv) It is not the case of the respondents that the retention of the applicant at Port Blair, beyond the prescribed tenure is as per her own request.

5. In the aforesaid backdrop, as it seems that the rejection of the prayer is on a wrong premise the impugned order dated 14.07.2018 is quashed and the matter is remanded back to the authorities to issue orders afresh in terms of the

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earlier direction of this Tribunal, within 4(four) weeks from the date of receipt of a copy of this order. Till such time status quo qua the applicant to be maintained

6. With this order the O A would stand disposed of. No costs.

**Nandita Chatterjee**  
**Member(A)**

**Bidisha Banerjee**  
**Member(J)**

AMIT

