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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

Application under section 19 of the Administrative Tribunal Act, 1985

Title of the Case :

O.A. No. 351/000 814 of 2018

In the matter of :

Dr. S.K. Biswas, son of Late K.R. Biswas, aged about
56 years, residing at Shadipur, Ward No. 14,
District – South Andaman, Port Blair, Pin – 744106
working as Associate Professor in Jawaharlal Nehru
Rajkeeya Mahavidyalaya, Port Blair, which is the
Government College under Andaman & Nicobar
Administration at Port Blair. -744106.

..... Applicant

- Versus -

1. Union of India through the Secretary, Ministry
of Human Resources Development,
Government of India, Sashtri Bhawan, New
Delhi – 110001.
2. The Lieutenant Governor, Andaman & Nicobar
Islands, Raj Niwas, Port Blair, Pin – 744101.

3. The Chief Secretary, Andaman & Nicobar
Administration, Secretariat, Port Blair,
Pin – 744101.
4. The Secretary, Higher Education, Andaman &
Nicobar Administration, Secretariat, Port Blair,
Pin – 744101.
5. The Deputy Secretary (Higher Education),
Andaman & Nicobar Administration,
Secretariat, Port Blair, Pin – 7441101.
6. The Principal, Jawaharlal Nehru Rajkeeya
Mahavidyalaya, Port Blair, Pin – 744101.
7. Dr. R.V.R. Murthi, Associate Professor
(Political Science), Mahatma Gandhi Government
College, Mayabunder, District – North and Middle
Andaman, Pin – 744101.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A.No.351/814/2018

Date of Order: 17.9.19

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

SWAPAN KUMAR BISWAS
VS.
UNION OF INDIA & OTHERS
[EDUCATION(A&N)]

For the applicant : Mr. P.C. Das, counsel

For the respondents : Mr. R. Halder, counsel
Mr. S.K. Datta, counsel

Bidisha Banerjee, Member-(J):

The applicant in this O.A. has sought for the following reliefs:-

"(i) To quash and/or set aside the impugned order of transfer being order no.1656 dated 25.05.2018 in respect of the applicant whose name appeared in serial no.5 and who has been transferred from Jawaharlal Nehru Rajkeeya Mahavidyalaya, Port Blair to Mahatma Gandhi Government College, Mayabunder which is absolutely against the rules and also against the views taken by the Administration appearing in Annexure A-11 of this O.A.;

(ii) To declare that transfer of the applicant from Jawaharlal Nehru Rajkeeya Mahavidyalaya, Port Blair to Mahatma Gandhi Government College, Mayabunder is otherwise bad in law and illegal because the Jawaharlal Nehru Rajkeeya Mahavidyalaya, Port Blair and Mahatma Gandhi Government College, Mayabunder are 2 different establishments and there is no inter-transfer liability between the 2 colleges and also it is against the condition of the appointment order which has been issued by the Administration in favour of the applicant being Annexure A-3 of this O.A.;

(iii) To pass an appropriate order directing upon the respondents authority to retain the applicant at Port Blair in Jawaharlal Nehru Rajkeeya Mahavidyalaya after setting aside the order of transfer and as there is no inter-transfer liability between the 2 colleges, therefore, under any circumstances the post of the applicant is not transferable."

2. He has contended that he was appointed to the post of Lecturer in Jawaharlal Nehru Rajkeeya Mahavidyalaya (JNRM) vide appointment order No.2433 dated 29.07.1995 and granted regular appointment vide order No.3048 dated 26.08.1999 to the said post of Lecturer w.e.f. 10.05.1999 with the approval of UPSC. He has resisted his transfer to Mahatma Gandhi Government College(MGGC), Mayabunder on the ground that Department of Higher Education has introduced the policy of preparation of common cadre of the Lecturers of the two colleges and, therefore, the Lecturers of the colleges were not inter-transferable. In support of his contention, that he had no transfer liability to MGGC, Mayabunder, he would place the decision of this Tribunal in O.A.No.75/AN/2011 rendered on 30.04.2012 in respect of one, M. Selevam of MGGC, Mayabunder and submit that pursuant to the order a speaking order was issued on 14.05.2012 clarifying that MGGC and JNRM were two different establishments and seniority of Lecturers of two colleges were not maintained separately in their respective institutions. He would further refer to a decision rendered in O.A.No.351/53/2014 where he was one of the applicants and had challenged the common cadre of both the colleges, but the contention was rejected vide speaking order dated 12.09.2017.

By an order dated 25.05.2018 he was sought to be transferred from JNRM, Port Blair to MGGC, Mayabunder allegedly in violation of the Recruitment Rules and the observations made by the Andaman & Nicobar(A&N) Administration regarding both the colleges. His

representation dated 05.06.2018 yielded no fruitful result. The applicant would cite the observation made by A&N Administration that both the colleges were separate establishments.

3. Per contra the respondents while refuting the claim that the Lecturers of two colleges have no inter-transfer liability would submit that a common cadre for both the colleges was formed for optimum utilisation of human resources in higher education in the Islands. When MGGC, Mayabunder had a sanctioned strength of Lecturers as 21, the actual strength was 9, which was not conducive for the pursuit of academic excellence, hence, with the approval of the Hon'ble Lieutenant Governor a common cadre was formed vide order dated 12.12.2000. Since the formation of common cadre no claims or objections were received until 2012. After implementation of the common cadre a provisional seniority list of teaching staff of JNRM and MGGC was issued on 22.10.2012, as no objections were received in that regard. However, as soon as the provisional seniority list was issued Sri M. Selvem, Assistant Professor of MGGC, Mayabunder filed **O.A.No.75/AN/2002** requesting his transfer from MGGC, Mayabunder to JNRM, Port Blair. The O.A. was disposed of with a direction to transfer him from MGGC, Mayabunder to JNRM, Port Blair which order when assailed before the Hon'ble High Court was dismissed. After the transfer of Sri M. Selvem, Assistant Professor from MGGC, Mayabunder to JNRM, Port Blair, 5 Assistant/Associate Professors of MGCC, Mayabunder filed O.A seeking transfer to JNRM, Port Blair. The said

O.A. was disposed of with a direction upon the respondents to consider their transfer to JNRM, Port Blair. In compliance of the directions of the Tribunal, vide orders dated 27.08.2012 and 20.11.2013, the transfers were effected.

The respondents would further contend that the applicant was appointed as Lecturer in JNRM w.e.f. 10.05.1999 with the approval of the UPSC vide order No.3048 dated 26.08.1999 with a clear stipulation that in respect of matters not specified, he would be governed by the relevant rules/orders in force from time to time in respect of Government servants of his category serving under Andaman & Nicobar Administration. Since at that time the transfer policy issued vide order No.2140 dated 23.04.1983 existed, the applicant was governed by the said transfer policy. The respondents would further submit that common Recruitment Rules for the post of Lecturer in JNRM, Port Blair and MGGC, Mayabunder was notified vide notifications dated 08.03.2005(Annexure R-2 to reply) and 17.08.2012(Annexure R-3 to reply) The respondents would reiterate that common cadre order was issued on 12.12.2000 and the draft inter se seniority list of the Lecturers of both JNRM as well as MGGC were formulated and circulated vide letter dated 22.10.2012. They would further contend that in terms of directions in **O.A.No.351/53/2014** the applicant's representation dated 10.03.2014 was disposed of with a speaking order dated 12.09.2017 and that the transfer order was issued

in compliance of the directions of this Tribunal dated 27.08.2012 and 20.11.2013.

4. At hearing, in support of their contentions Id. counsel for the respondents would invite our attention to the order No.2140 dated 23.04.1983 issued in supersession of all previous orders in order to introduce a uniform general transfer policy which clearly mentioned that the concerned Head of Departments should maintain lists of all persons who have been in the particular posts for more than three years. Id. counsel would, therefore, contend that the Lecturers of JNRM have no vested right to remain at Port Blair for ever . The order reads as under:-

"(1) In all cases the concerned transferring authority should generally try to ensure that nobody remains in a particular transferrable post (including a particular desk in the case of ministerial(staff)) for more than three years.

The concerned Heads of Departments/Offices should maintain lists of all persons who have been in the particular posts for more than three years. Copies of these lists should be sent to the next superior authority, viz. concerned Secretary, Chief Secretary or Lieutenant Governor as the case may be and updated every quarter. Whenever any transfers are made in respect of the rele.....(not legible) category, persons should not be retained on this list without being transferred except for special reasons(not legible) the prior approval of the next superior authority. This need not, however, be applied to personal staff or to drivers of vehicles etc.

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(2) A fair rotation should be attempted in regard to outstation posting. Persons should be sent to outstation preferably on first posting or on promotion. No one should normally be required to stay in an outstation for more than three years even if he is willing to continue, he should not be retained in the outstation without (except where Lt. Governor is the transferring authority) the approval of the Chief Secretary.

Further, whenever a posting is to be made to an outstation, persons who are at Port Blair should be considered first in the order of their duration of stay at Port Blair. However, there should not normally be any objection to a person being transferred from one outstation to another in a different island, rather than coming back to Port Blair, if he has no objection and if his conduct was good."

Ld. counsel would further refer to the Recruitment Rules issued on 08.03.2005 to contend that the common Recruitment Rules govern the recruitment to Group A gazetted non-ministerial posts of Lecturer of various discipline in the two establishments of JNRM, Port Blair and MGGC, Mayabunder. Ld. counsel would further place Recruitment Rules issued on 17.08.2012 which governed the two colleges and a notice dated 22.10.2012(Annexure R-4 to reply) inviting claims and objections from the Assistant/Associate Professors of JNRM & MGGC against common seniority list for the purpose of promotion to the posts of Lecturer. The Ld. counsel would next place the order dated 28.03.2017 in O.A.No.351/00053/2014 directing disposal of representations of five applicants including the present applicant against the common seniority list.

5. By way of rejoinder the applicants have placed the following:-

(i) An order dated 20.08.2013 issued pursuant to the directions in O.A.No.37/AN/2013 in case of Dr. Sainaba vs. Education, where the answering respondent being Secretary, Education had emphatically declared as under:-

"1. That, JNRM College, Port Blair and MGG College, Mayabunder are two different establishments having their own sanctioned strength and the posts are filled by UPSC separately as per the roster prepared by the respective Institutions as per their own sanctioned strength.

2. In pursuant to the UPSC's recommendation vide its letter No. F.4/12(2)/98-ADT.3 dated 10.05.1999, Dr. Sainaba Goldar was appointed to the post of Lecturer (Hindi) on regular basis with the approval of the Competent Authority out of the sanctioned strength of Lecturer (Hindi) in Mahatma Gandhi Government College, Mayabunder. As such, Dr. Sainaba Goldar has become the permanent employee of the said Institution (MGG College, Mayabunder).

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7. Since, the JNRM College, Port Blair and MGG College, Mayabunder are two different establishments having their own sanctioned strength, as such the posts of each College is being filled-up separately through the UPSC as per the roster prepared by the respective Institutions according to their own sanctioned strength. The transfer policy dated 30.07.2007 is meant for those employees who are recruited to common cadre through common recruitment process like Amalgamated Clerical Cadre, Departmental staff like Agriculture, Fisheries etc. It does not and cannot be made applicable to employees recruited and appointed for specific institutions. The attempt of applicant concerned to bring herself in ambit of this transfer policy is therefore misleading.

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xxxxxxxxxxxxxxxx it is hereby informed to Dr. Sainaba Goldar, Assistant Professor (Hindi), Mayabunder that her request for transfer her from MGG College, Mayabunder to JNRM, Port Blair cannot be acceded to in the public interest, especially in view of the fact that both the faculty members have applied for transfer which will amount to closure of Hindi department in the MGG College, Mayabunder and future of approximately 300 students who have opted for the course will be at stake.

- (ii) An order dated 19.03.2018 (Annexure R-3 to the rejoinder) providing information under RTI Act that shows no common seniority list was prepared after 12.12.2000.
- (iii) There was a proposal initiated on 27.11.2000 for merging the two cadres when the Secretary cum DE observed that:-

"xxxxxxxxxxxxxxxx There was no commonality between these two institutions and the present problems has started because of the two actions as Sl.No.1& 2 above. The problem is further going to be complicated as in future there would be intense litigation for determining the inter-se-seniority among teachers, if these teachers join JNRM college, Port Blair. This will adversely affect the academic atmosphere in M.G. College, Mayabunder as well as JNRM Port Blair. Only handful of ligating teachers stands to gain at the cost of thousands of students who stand to loose tremendously. The social impact of the only undergraduate college in that part of island not performing to its full potential will be tremendous. It will not be exaggeration that if we allow this to continue we may ultimately loose M.G. College, Mayabunder."

- (iv) The relevant Office notes that read thus:-

"xxxxxxxxxxxxxxxx On the basis of the common cadre order, a draft common seniority list was published for inviting objections on 12.10.2012, but it was never finalised."

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"Finally, the Administration with the approval of the Hon'ble Lt. Governor/Administrator, A&N Administration has transferred Shri M. Selvem, Assistant Professor from MGG College, Mayabunder to JNRM College, Port Blair in compliance of the Hon'ble CAT & Hon'ble High Court Order. The Hon'ble Lt. Governor has approved the case of Shri M. Selvem only and further desired that **"this should not set a precedence"**(kindly see para 81/n on page 27/N)."

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"The Hon'ble High Court, Calcutta Bench at Port Blair adjudicated the direction of Ld. Tribunal relying on:

- The length of service of the respondent which is not true.
- Common Cadre which has not been enforced in terms of transfer. The same is in existence in terms of promotion and Recruitment Rules as per UGC norms that are mandatory for all UG and PG College.
- Common transfer policy circular which is not applicable to the teaching faculty of the colleges under Andaman and Nicobar Administration.

Thus it is a fit case for going for SLP in the Hon'ble Supreme Court.

In view of the above, Administrative Branch strongly feels about legal advice for processing this case further for preferring SLP before Apex Court. Hence, if approved we may obtain the considered views/suggestion from the Law Department of this Administration and also from the Govt. Pleader in legal point of view in the first instance."

6. Ld. counsel for the respondents on the contrary, would invite our attention to a decision of the Hon'ble High Court in WPCT No.738/2012 about inter transferability of the teachers of MGGC and JNRM. The order is extracted hereunder with emphasis for clarity:-

"It is true that the Policy Guidelines for transfer are directory and not mandatory, and cannot be legally enforced. However, arbitrariness strikes at the root of Article 14 of the Constitution, Arbitrariness and discrimination warrants judicial interference. If exigencies require, an employee may be transferred earlier or kept in a particular place of posting for a longer period. However, posting one person at the same college for 17 years is arbitrary and cannot be justified under any circumstances. The respondent has been discriminated against and kept posted in Zone-B notwithstanding his personal difficulties, including serious ailments of his aged mother, which require specialized treatment.

We agree with the finding of the learned Tribunal that the service of the teachers of the two institutions are inter transferable. Transfer of the respondent has wrongfully been declined on the erroneous premises that he

is a permanent employee of MGGC even through employees of MGGC and JNRM constitute a common cadre.

The earlier order dated 30th April, 2012 of the learned Tribunal having assumed finality, the writ petitioners were bound to consider the prayer of the respondent as per the transfer policy. The prayer of the respondent could not have, at this stage, been rejected on the ground of the respondent's posting being permanent."

7. Having heard the Id. counsel for the parties and having perused the materials on record and the findings of the Hon'ble High Court which has set right the dispute whether the Lecturers of the JNRM & MGGC "are inter transferrable" which binds us as a decision of a superior forum, we have no other alternative but to hold that the claim of the present applicant that due to his appointment at JNRM, Port Blair he cannot be transferred to MGGC Mayabunder, is not tenable. Therefore, the claim fails.

8. However, we note that in recent past proposal has been initiated on 29.01.2019 to cancel the Common Cadre Order No.4688 of 12.12.2000. It is not forthcoming whether the proposal has been given a final shape by the competent authority. The merits and demerits of Common Cadre have been divulged as under:-

"Demerits of Common Cadre :

1. *Reduction in work force of MGG College Mayabunder;*
2. *Increase in students inflow in Port Blair;*
3. *Discontent among the population of N&M Andaman due to semi functional institution;*
4. *Closure of several course in MGG College leading to withdrawal of affiliation for these courses by Pondichery University;*
5. *Increase litigation among teaching staff for determining inter-se-seniority;*

6. Encourage other group of employees to seek their transfer to Port Blair.

Merits of withdrawal of Common Cadre Order:

1. Availability of fully functional college in northern part of the island with enable population;
2. Save JNRM, Port Blair from further crowding;
3. Discharging the social obligation of providing education need in catchment area;
4. Stop constant litigation from teachers for posting in Port Blair
5. It will reduce overcrowding of students at JNRM, Port Blair;
6. It will also put full stop to rampant litigation filed by the Lecturers of MGG College, Mayabunder for transfer from MGG College, Mayabunder to JNRM, Port Blair;
7. Affiliation of the MGG college will be withdrawn, in the absence of sufficient number of regular teaching staff."

Therefore, before we part, we would also direct the respondent authorities to issue appropriate administrative order to clarify their stand in regard to transfer liability of the Lecturers of JNRM, Port Blair and MGGC, Mayabunder in the light of the decision of the Hon'ble High Court, as enumerated supra and any subsequent administrative order, to put an end to the never ending dispute and endless litigations of the Lecturers of these two colleges as well as to give a *quietus* to the issue.

No costs.

(Dr.Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member