



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH,  
CUTTACK

TRIBUNAL CASE No. 9 OF 1986.

Date of decision : 23.7.1986.

Sri Satish Chandra Nanda ..... Petitioner  
M/s S.B.Nanda, N.K.Misra, R.K.Bose,  
S.K.Nanda & Miss. B.Mishra, Advocate(s) for Petitioner.

Versus

Director General, All India  
Radio and others. .... Respondents.  
Mr. Ganeswar Rath, Addl. Standing Counsel  
( Central ) : For Respondents.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D .

THE HON'BLE MR. K.P. ACHARYA, MEMBER ( JUDICIAL )

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the Reporter or not ?
  3. Whether their Lordships wish to see the fair copy of the judgment ?
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J U D G E M E N T

K.P.Acharya, Member (Judicial),

The petitioner was originally posted as Mechanic in the All India Radio, Sambalpur, on 6.6.1963. In 1970, the petitioner was promoted to the rank of Senior Mechanic-cum- Technician. The Departmental Promotion Committee which met in 1976, 1977 and 1979 had recommended the promotion of the petitioner and ultimately , the petitioner was promoted on 3.10.1979 to the post of Engineering Assistant at Cuttack, vide Annexure- 5. On 9.1.1982 the petitioner was transferred~~ed~~ and posted at Sambalpur in the same post. On 5.9.1985, the petitioner ( vide Annexure-6) ~~has been~~ <sup>was</sup> transferred to the All India Radio Station, Aizwal ( Mizoram). Being aggrieved by this order of transfer , the petitioner has filed an application under section 19 of the Administrative Tribunals Act, 1985 praying therein to quash the impugned order of transfer.

2. In their counter, the respondents maintained that in ~~the~~ <sup>the</sup> normal course , the petitioner has been transferred in the interest of administration and this order of transfer not having been made as a <sup>measure</sup> ~~major~~ of punishment , the Tribunal should be ~~be~~ <sup>be</sup> slow to interfere with such order of transfer .

3. Law is well settled that <sup>in</sup> the case of transfer or similar administrative orders , the Court/ Tribunal would not normally interfere unless such order is shown to have been passed with a malafide intention or a sort of bias being prevalent in the mind of the transferring

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authority. While called upon to indicate to us as to whether there was any malafide or bias on the part of the transferring authority, the learned counsel for the petitioner Mr. N.K. Misra could not successfully point out any malafide or bias existing in the mind of the transferring authority. The only points that were urged before us ~~xxxx~~ by the learned counsel that once a particular employee has been posted at a station which comes within 'C' category, he should not be normally transferred to another station which also comes within the same category. In this particular case, as submitted by the learned counsel for the petitioner, Sambalpur is said to have come within the 'C' category and similarly Aizwal also comes within 'C' category and therefore it was urged by the learned counsel for the petitioner that the transferring authority has violated the guidelines sent by the Ministry of Information & Broadcasting and since those directives have been violated the order of transfer should be struck down.

Lastly it was submitted that there has been ~~xxx~~ a clear ~~violation~~ discrimination by the transferring authority while transferring the petitioner because co-employees of the petitioner who have stayed more number of years at Sambalpur and Cuttack have not been touched and therefore the arbitrary view taken by the transferring authority in transferring the petitioner should also be struck down on this count.

4. The learned Addl. Standing Counsel submitted before us that the names of the persons which have been mentioned in the original application said to have remained



for a longer period than the petitioner are being shortly transferred on the general transfer but the transfer of the petitioner was necessary under exigency of service and therefore no malafide having been pleaded by the petitioner against the transferring authority, the Tribunal should not quash the order of transfer. We think there is substantial force in the contention of the learned Addl. Standing Counsel.

5. As regards the first point urged by the learned counsel for the petitioner that the petitioner having once served in a category 'C' station, he should not be transferred to another station coming within 'C' category without any promotion being given to him, as a guideline laid down by the concerned authorities and which should be in normal practice to be followed but there cannot but be abnormal circumstances for which there could be some deviation from the guidelines laid down by the concerned authorities. In our opinion, if the Tribunal extends its hands on the transfer order without having formidable reasons for striking down a particular transfer order, then there would be chaotic <sup>Condition</sup> in the administration and the administration may remain in stand still position. By this we do not mean to say that the Tribunal would be a <sup>mute</sup> ~~mere~~ spectator to any order passed with malafides, bias or being of an arbitrary nature. Undoubtedly, the Tribunal would not be slow, rather it would be fast to give protection to the persons aggrieved if there are something <sup>materials</sup> ~~with~~ <sup>in</sup> of the aforesaid nature but at the risk of the <sup>petition</sup> ~~petitioner~~, we may say that no malafide, bias or prejudice having been pleaded or shown

to us in this particular case, we do not feel inclined to interfere with the impugned order.

6. Before we part with this case, we cannot but observe that an employer is bound to take a <sup>Compassionate</sup> ~~compensate~~ and sympathetic view in respect of the personal difficulties of the employee. It was strenuously urged before us by Mr. Misra, the learned counsel appearing for the petitioner that Aizwal being a distant place from the State of Orissa and there being no adequate facility for properly educating the children of the petitioner in Oriya medium, it would be extremely difficult for the petitioner to take his children to Aizwal because education of children is of paramount consideration to any father or mother. For the smooth prosecution of the studies of the children of the petitioner, <sup>are</sup> ~~there~~ certain changes <sup>to</sup> ~~be~~ bound to occur, and for that purpose our attention was invited to letter No. 16/14/81-A & G dated 28.3.1984 issued by the Director General, All India Radio, New Delhi regarding retention of general pool accommodation/ allotment of alternative general pool accommodation to civilian Central Government Employees posted to States and Union Territories of North- Eastern Region. Undisputedly, Mizoram comes within the North-Eastern region. Therefore, the directives contained in the said letter applies in full force to the case of the petitioner. In this connection, we would recommend that the concerned authorities would take serious notice of the clauses (a) and (b) of the said letter and during the posting of the petitioner at Aizwal, the petitioner shall not be evicted from the quarters occupied by him now at Sambalpur and he can only be evicted from that quarter after he is provided with a quarter which may be lower in type to the quarter

occupied by him as an alternative accommodation. By lower in type we mean the type prescribed in clause (a) . In case , no quarter lower in type is available to be provided to the petitioner, he shall not be evicted from the quarter occupied by him for the present. In case the petitioner does not join at Aizwal within fifteen days from today , the respondents would be at liberty to evict the petitioner from the quarter occupied by him now and to take other appropriate action as contemplated under law .

Subject to the aforesaid observations, the application stands dismissed but without costs .

*K. S. Rao*  
 ..... 23/7/86 .....  
 Member ( Judicial )

B.R. PATEL, VICE- CHAIRMAN,

*I agree.*

*B. R. Patel*  
 ..... 23.7.86 .....  
 Vice Chairman.

Central Administrative Tribunal,  
 Cuttack Bench, Cuttack.  
 The 23rd July, 1986/D.C.Roy.