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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION No. 213 OF 1987.

Date of decision December 17, 1987.

K.Prafulla Ch. Patra, son of late K.Ramaya Patra,
a permanent resident of Kabisuryanagar, P.O. Kabisuryanagar,
Dist- Ganjam, at present under orders of transfer and
posted in the Office of the I.T.O. Jeypore, Dist- Koraput.

... Applicant.

Versus

1. Union of India, represented through the
Secretary, Ministry of Finance Revenue,
North Block, New Delhi .
2. Commissioner of Income Tax, Orissa, Bhubaneswar.
3. Inspecting Asst. Commissioner of Income Tax,
Berhampur Range, Berhampur, Dist. Ganjam.

... Respondents.

M/s Aswini Kumar Mishra & S.K. Das
Advocates.

... For Applicant.

Mr. Sobesh Ray, Standing Counsel
(Income Tax)

... For Respondents 2 & 3

Addl.

Mr. Ashok Mishra, Standing Counsel
(Central)

... For Respondent No.1

C O R A M :

THE HON'BLE MR. B.P. PATEL, VICE CHAIRMAN

A N D

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

1. whether reporters of local papers are permitted to
see the judgment ? Yes .
 2. To be referred to the reporters or not ? NO
 3. Whether Their Lordships wish to see the fair
copy of the judgment ? Yes .
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J U D G M E N T

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant seeks to get his order of transfer passed by the competent authority quashed.

2. Shortly stated the case of the applicant is that he is a Stenographer Grade II attached to the office of the Assistant Commissioner of Income Tax stationed at Bhubaneswar. The applicant has been transferred to Jeypore vide Annexure-3 dated 5.6.1987. Being aggrieved by this order of transfer, the applicant has filed this application praying therein to quash Annexure-3.

3. In their counter, the respondents maintained that the transfer order has been passed on administrative grounds and the Bench should not interfere with the order of transfer and further it is maintained that there being no merit in this case, it is liable to be dismissed.

4. We have heard Mr. A.K.Misra, learned counsel for the applicant, Mr. Ashok Misra, learned Addl. Standing Counsel (Central) for Respondent No.1 and Mr. S.C.Ray, learned Standing Counsel for the Income Tax Department at some length. Mr. Mishra strenuously and emphatically urged before us that the order of transfer should be quashed for the following reasons .

- (1) Sons and daughters of the applicant are prosecuting their studies at Bhubaneswar and especially the son of the applicant is prosecuting his study in Anthropology

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under Utkal University. As there is no such subject in Berhampur University, there is no chance for this boy to be admitted into the Berhampur University. Further submission in this regard was that taking away the sons and daughters to another institution under Berhampur University during the midst of academic session will jeopardise the interest of the applicant and his children.

- (ii) The next point on which Mr. Misra urged before us is that there are several other incumbents in the same cadre who have been in the office at Bhubaneswar for a longer period than the petitioner and choosing the petitioner to be transferred to Jeypore would amount to an arbitrary exercise of powers.
- (iii) It was also submitted by Mr. Misra that the order of transfer is backed by malafides because even though the applicant had made a representation to cancel the order of transfer, yet it was not disposed of by the competent authority and it is since disposed of because of the direction given by this Bench.
- (iv) The last point on which Mr. Misra emphasised was that while disposing of the representation the competent authority has not given any reasoned order .

All these arguments were stiffly countered by Mr. S.C. Roy, learned counsel for the Income Tax Department who submitted that the applicant always has a grievance on any

transfer order passed in his case especially when he was transferred from one section to the other in the same building in the same premises and in the same station. We have no doubt in our mind that the statement of fact made by the learned Standing Counsel is absolutely correct. True it is that education of children is of paramount consideration for a father but his services at the disposal of a particular authority or in a particular office is subject to exigency. As regards exercise of arbitrary powers and malafides, we feel that there is no exercise of arbitrariness because it is always the discretion of the competent authority to choose a particular person to be transferred and this is also subject to suitability to discharge a particular nature of duty- a thing which completely lies within the discretion and competence of the authority concerned. We also do not agree with Mr. Misra that while rejecting the representation a reasoned order should have been given by the competent authority.

5. In view of the aforesaid discussions, we find no merit in the contentions raised by Mr. Misra on behalf of the applicant.

6. As a last straw on the camel's back, Mr. Misra submitted before us that the authorities could be requested to take a compassionate view over the applicant. We have no doubt in our mind that in future the competent authority would take a compassionate view, if the petitioner deserves but such compassionate view should be or could be taken after the petitioner joins at Jeypore. In case it is not possible to adjust the applicant at Bhubaneswar, the Commissioner may also consider adjustment of the applicant some where in

the neighbourhood of Bhubaneswar, if the applicant makes himself worthy to invoke the compassionate heart of the Commissioner.

7. Thus, the application is disposed of accordingly leaving the parties to bear their own costs.

[Signature]
 17.12.87
 Member (Judicial)

B.R.PATEL, VICE CHAIRMAN, *I agree.*



[Signature]
 17.12.87
 Vice Chairman.

Central Administrative Tribunal,
 Cuttack Bench.
 December 17, 1987/ Roy SPA.