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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.263 of 1987.

Date of decision : November 18,1988.

Gouranga Charan Poi, aged about
35 years, s/o Shri Laxmidhar Poi,
L.D.C., Office of the Asst. Collector,
Central Excise and Customs, Cuttack
Division, At/P.O./Dist.Cuttack. ... Applicant.

Versus

1. Union of India, represented by its
Secretary, Department of Banking & Revenue,
Ministry of Finance, New Delhi.
2. Collector, Central Excise & Customs,
Orissa, Bhubaneswar, District-Puri.
3. Deputy Collector (P & E),
Central Excise & Customs,
At/P.O.Bhubaneswar. Dist.Puri.

... Respondents.

For the applicant ... M/s.Deepak Misra,
R.N.Naik, S.S.Hota,
A.Deo, Advocates.

For the respondents ... Mr.A.B.Mishra, Senior Standing
Counsel (Central)

Mr.Tahali Dalai, Addl. Standing
Counsel (Central)

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 ? Yes.
 2. To be referred to the Reporters or not ? *Yes*.
 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 quash the order of transfer contained in Annexure-1.

2. Shortly stated, the case of the applicant is that he is a Lower Division Clerk attached to the Office of the Assistant Collector, Central Excise & Customs, Cuttack. On being transferred from Sambalpur the applicant joined his post at Cuttack on 7.11.1986. Practically one year after his joining at Cuttack the applicant vide Annexure-1 has been again transferred to Sambalpur. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the order of transfer should not be unsettled because it has been passed on administrative grounds.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and learned Additional Standing Counsel (Central), Mr. Tahali Dalai at some length. We have also perused the averments in the original application and in the counter. It is worthwhile to mention that in the counter lot of facts have been stated regarding the unauthorised absence of the applicant from his duty at Sambalpur and on some occasions at Cuttack. So far as the unauthorised absence from Sambalpur is concerned, we do not feel inclined to express any opinion on such facts because it formed subject matter of O.A. 43 of 1987 which is still pending decision by this Bench and the allegation regarding unauthorised absence etc. has no relevance at all to the

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issue at hand, to be decided by this Bench. We confine ourselves to adjudicate the justifiability or otherwise of the order of transfer. It is too well settled that ordinarily an order of transfer should not be unsettled unless there is malafide and such malafide must be proved to the hilt. Mr. Misra urged before us that since the applicant came up in O.A. 43 of 1987 before this Bench and a direction was obtained from this Bench for payment of salary due to the applicant, the authority bore grudge against him and the order of transfer resulted therefrom. Despite this argument advanced by Mr. Misra we would also refrain ourselves from expressing any opinion on this matter because of pendency of O.A. 43 of 1987 which deals with the allegation regarding unauthorised absence. Without prejudice to the contentions to be advanced by the applicant in O.A. 43 of 1987, we may only say that besides this assertion there is no credible evidence before us that the competent authority had borne a grudge against the applicant on account of the applicant having approached this Bench in O.A. 43 of 1987. It is only an apprehension of the applicant and we cannot act on apprehensions.

5. Next, it was urged by Mr. Deepak Misra that while ordering transfer of the applicant to Sambalpur the concerned authority has completely overlooked the directives of the Government of India issued from time to time in regard to posting of husband and wife at the same station. Mr. Misra drew our attention to the indication given by the Government

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in O.M.No.28034/7/86-Estt. (A) dated 3.4.1986 wherein it is stated,

" Where one spouse is employed under the Central Government and the other spouse is employed under the State Government; the Central Government spouse may apply to the competent authority who may post the person to the station, or if there is no post in that station, to the State where the other spouse serves. "

He also drew our attention to the circulars issued by the Department of Social Welfare D.O. letter No.3-265/75-WW dated 28.2.76 read with M.F. (D.R&I) F.No.22020-1/76-Coord. dated 15.3.1966 which runs thus:

" Posting of husband/wife team in the same station. At the meeting of the Consultative Committee of the Ministry of Education and Social Welfare held on 18.8.75 a suggestion was made that husband/wife team should be posted in the same station. This, while helping to keep a family together and lessening the burden of the husband/wife, would also ease the problems of accommodation and of security to the women employees. This matter was also raised at the Validatory meeting of the National ~~xxxx~~ committee on the International Womens' Year on 17.2.76.

The matter may be given serious consideration and all possible steps made to post husband/wife team and keep them together.

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6. Mr. Dalai, learned ~~Agd~~ Standing Counsel (Central) submitted before us on the basis of the counter that the story put forward by the applicant that his wife Mrs. Kalpana Mohanty is serving in Ravenshaw College as Matron is nothing but false because though in the counter it was stated that the applicant is put to strict proof thereof, heavy onus that lie on the petitioner not having been discharged by him, this

Bench should not accept Mrs. Kalpana Mohanty to be the wife of the present applicant and hence the directives relied upon by the learned counsel for the application[^] should not be taken into consideration by this Bench. We have given our careful consideration to the averments made in the counter. Nowhere we have found that there has been an assertion that Mrs. Kalpana Mohanty is not the wife of the present applicant. Without any assertion to the above effect from the side of the respondents, the onus never shifts to the applicant and therefore, the question of putting the applicant^{to} strict proof thereof does not arise. Mr. Dalai further contended that there was no necessity for the respondents to assert firmly that Mrs. Kalpana Mohanty is not the wife of the applicant because from the cause title of the original application it could be found that the name of the applicant is Gouranga Charan Poi whereas the lady is named as Smt. Kalpana Mohanty. True, it may be so. In several cases the surname of the wife still continues and carried with her from her father's family. There are certain ladies who have though grown old yet have not bothered to change their surname according to the surname of their husbands. Therefore, from the aforesaid contention of learned Addl. Standing Counsel (Central), Mr. Tahali Dalai we cannot jump into a conclusion that Smt. Kalpana Mohanty is not the wife of the applicant especially when there is specific assertion made by the applicant that Smt. Kalpana Mohanty is his wife. Therefore, we do accept the position that the wife of the applicant is serving at Cuttack in

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Ravenshaw College. Be that as it may, all the directives over which the applicant's counsel has relied upon are advisory and are not mandatory. However, to give encouragement and incentive to its employees to work for the Government with loyalty, those directives have been issued to be kept in view of the concerned authorities as far as possible. Keeping in view the overall situation of this case, as indicated above, though we do not feel inclined to quash the order of transfer at Annexure-1 we would say that the competent authority may reconsider the case of the applicant in regard to his transfer to Sambalpur especially because his wife has been posted at Cuttack and try to adjust the applicant, if possible, either at Cuttack or any other stations nearer to Cuttack including Bhubaneswar. We would expressly say that Annexure-1 remains effective subject to reconsideration of the case of the applicant by the competent authority in the light of the observations made above. Such reconsideration and final orders should be passed by the competent authority preferably by 20th December, 1988 and the stay order granted by this Bench will remain effective till 25th December, 1988 or the date on which final order is passed whichever is earlier.

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

B.R.PATEL, VICE-CHAIRMAN?

9 agree.

Member (Judicial)

Vice-Chairman

Central Administrative Tribunal
Cuttack Bench, Cuttack.
November 18, 1988/S. Sarangi.

