

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No. 306 of 1987.

Date of decision : September 27, 1988.

Sri Brundaban Champaty, son of late Upendra Champaty,
At. Kapilprasad, P.O. Sundarpada, Bhubaneswar, Dist- Puri.

... **Applicant.**

Versus

1. Union of India, represented through the Secretary to the Department of Civil Aviation, New Delhi.
2. Director General, Civil Aviation, East Block No. II and III, Ramakrishna Puram, New Delhi.
3. Regional Director, Civil Aviation Calcutta Region, Calcutta Airport, Calcutta- 700 052.

... Respondents.

M/s Sadananda Kheti, B.P.Das
and S.C. Das, Advocates .. For Applicant.

Mr. Ashok Misra, 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)

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.

JUDGMENT

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the order passed by the competent authority transferring the petitioner to Agartala is under challenge and sought to be quashed.

2. Shortly stated, the case of the petitioner is that he was a Fire Operator in the Civil Aerodrome at Bhubaneswar and in August, 1983 while the aircraft carrying the Chief Minister was about to land, the petitioner along with some others were said to have been squatting on the runway for which delay was caused in the matter of landing of the aircraft carrying the Chief Minister. Soon thereafter the order of transfer contained in Annexure-1 dated 2.9.1983 was passed directing the petitioner to join at Civil Aerodrome, Agartala.

3. In their counter, the Opposite Parties maintained that the order has been passed in the interest of administration and moreso the petitioner by his mis-conduct namely squatting in the runway had seriously got the discipline of the Department affected and therefore in all fitness of things, the petitioner was rightly transferred which should not be interfered with by this Bench.

4. We have heard Mr. S. Kheti, learned counsel for the petitioner and Mr. Ashok Misra, learned Additional Standing Counsel for the Central Government at some length. After giving our anxious consideration to the arguments advanced at the Bar, we are of opinion that as a general rule

~~the~~ ^{an} order of transfer cannot amount to a punishment but in the peculiar facts and circumstances of the case, where the order of transfer amounts to a punishment, to comply with the principles of natural justice at least an explanation should have been called for from the person aggrieved and he should have been heard as to what has to say in the matter ^{even} if the disciplinary authority intends to inflict minor penalty. In the present case it appears ~~as~~ Annexure-12 is a Memorandum bearing No. C.13013/9/83-WE (A) dated 19th August 1987 issued by the Director General of Civil Aviation. In para (a) it is stated as follows :-

" that he (meaning the petitioner) was involved in an incident of squatting on the runway at Bhubaneswar when the aircraft carrying the Chief Minister of Orissa was to land. This had caused delay in landing of the aircraft ".

From the above quoted paragraph, it is crystal clear that the order of transfer resulted as a measure of punishment from the allegations levelled against the petitioner. In such circumstances, we are of firm opinion that an explanation should have been called for from the petitioner to ascertain the truth or otherwise of the allegations levelled against him. In this case admittedly no explanation was called for from the petitioner.

5. All and above this, our attention was invited by Mr. Kheti, learned counsel for the petitioner to the correspondence contained in Annexure-4 which is a letter ^W

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dated 23.8.1985 from the Deputy Secretary to the Chief Minister addressed to the Private Secretary of Union Minister of Civil Aviation, New Delhi. This letter has been addressed to the addressee under the direction of the Chief Minister. In the first paragraph, it is stated as follows :-

" xx xx xx

and as Shri Champati was Secretary of the Union, he was transferred to Agartala even though he was not a party to this unlawful act".

In the next paragraph, it is stated as follows :-

" Further it appears as he was Secretary of the Union, he has been made responsible though he had no hand in this unfortunate incident".

Mr. Ashok Misra, learned Addl. Standing Counsel vehemently opposed this argument advanced by Mr. Kheti on the ground that there was no scope for the Chief Minister to notice as to who were the miscreants. Be that as it may, in no circumstance we can shrink back to pay due credibility and utmost importance to the aforesaid statement made in the letter under the direction of the Chief Minister. Therefore, the involvement of the petitioner in the incident in question also becomes doubtful.

6. Last but not the least, the order of transfer suffers from ^a great infirmity. Therein it has been mentioned that the petitioner has been transferred permanently. This expression of opinion contained in Annexure-1 of the competent authority is against justice.

equity and fair play. All and above this, it cannot ~~go~~ ^{escape} one's notice that the impugned order of transfer has been passed ~~after~~ ⁱⁿ five years ago i.e., in the year 1983. Probably it has now lost its ~~force~~ ^{importance}.



7. In view of the aforesaid facts and circumstances of the case, we hereby over-rule the stiff opposition of Mr. Ashok Mishra and we would find that the order of transfer contained in Annexure-1 is not sustainable. Therefore, it is hereby quashed.

8. Thus, the application stands allowed leaving the parties to bear their own costs.

Agreed M.P.
27.9.88.

.....
Member (Judicial)

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

Ramachandran
27.9.88.
.....
Vice Chairman.

Central Administrative Tribunal,
Cuttack Bench.
September 27, 1988/Roy, Sr.P.A.