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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION No. 356 OF 1987

Date of decision ... January 19, 1988.

Sri Baidyanath Jena, IPS, aged about 49 years,
son of Sri Nilakantha Maharatha, Deputy Commissioner,
State Transport Authority, Orissa, Cuttack,
residing in Qrs. No. C-1 -Block 2, C.B.6, Campus,
Cantonment Road, Cuttack-1.

.... Applicant.

1. State of Orissa, represented through the Secretary,
Home Department, Secretariat Building, Bhubaneswar.
2. Secretary, Transport Department, Orissa,
Secretariat Building, Bhubaneswar .
3. Secretary to Government of Orissa, General Administration
Department, Secretariat Building, Bhubaneswar .
4. Union of India, represented through the Secretary,
Ministry of Home Affairs, New Delhi.

.... Respondents.

M/s R.K. Mohapatra, Deepak Misra,
B. Rautray, R.K. Rath, I. Mohanty
and L. Pradhan, Advocates

... For Applicant.

Mr. P.K. Mohanty, Addl. Standing
Counsel (State)

... For Respondents 1 to 3

Mr. A.B. Misra, Sr. Standing
Counsel (Central)

... For Respondent No. 4

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 from local papers have been
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 challenges the proposed order of transfer which is being passed recalling the applicant from the post of Deputy Commissioner of Transport and prays before this Bench to quash the same.

2. Shortly stated, the case of the applicant is that he is a Member of the Indian Police Service and as such he has served the Government in different capacities and ultimately he was deputed and posted as Deputy Commissioner, Transport one and half years ago and he is serving as such till today. According to the applicant, the order of transfer was passed in last part of August 1987 and on 5.10.1987 Hon'ble Chief Minister had ordered the transfer to be kept in abeyance for two months. After lapse of two months, the said transfer order is being sought to be given effect to. Further case of the applicant is that not only the order of transfer is against the provisions contained in Book Circular No.42 but it is in clear violation of the directives issued by the Government in General Administration Department from time to time. It is further maintained by the applicant that his transfer from Cuttack in this mid academic session would be a harsh punishment imposed on the children of the applicant as the children are bound to accompany the applicant when he moves out from Cuttack and thereby studies of the children would be seriously hampered and jeopardised because in this mid

academic session it is ^{an} impossible to get his children admitted in institutions functioning at his new place of posting. Besides the above, there are also certain other points on which the proposed transfer is sought to be struck down and they would be dealt at the appropriate place.

3. In their counter, the State Government (Respondents) maintained that the transfer is in the interest of public service and exigency and therefore the order of transfer sought to be quashed should not be unsettled.

4. We have heard Mr. R.K.Mohapatra, learned counsel for the applicant and Mr. P.K.Mohanty, learned Additional Standing Counsel for the State Government at some length. We have also heard learned Sr.Standing Counsel for the Central Government. Mr. Mohapatra contended that para 11 of the Book Circular 42 prescribes that once an Officer has been deputed from the parent department to another Department or to the foreign service, ^{he} should normally remain for three years in the saidpost and hence it was submitted by Mr. Mohapatra that deviation of the concerned authorities from this directive should persuade the Bench to strike down the transfer order. It was further submitted by Mr. Mohapatra that on a perusal of Annexures-7 and 7/1 which contained copy of letter No. 9 & M/I-57/85 7330/Gen. dated 3rd April 1985 issued by the General Administration Department to all Secretaries of the Government, it would be found that the State Government desires that an Officer

in a particular station should remain for three years unless he is to be shifted on being promoted or in extreme exigencies of public interest which requires the Officer to be transferred and one should sparingly make use of the ~~said section~~⁴. Practically similar is the directive of the Government contained in Annexure-7/1 which is a copy of letter No. 2775 dated 20.4.1985 issued by the Secretary of the General Administration Department. Mr. Mohapatra also relied upon the ban order passed by the Government contained in Annexure-9 which is dated 5.8.1987. Basing on these documents, it was vehemently contended by Mr. Mohapatra that gross injustice is being done to the applicant in recalling him from the post to which he went on deputation before expiry of three years and it was further urged by Mr. Mohapatra that the Government having failed to indicate in their counter the nature of public exigency for which the applicant is being recalled to the parent department, the story put forward by the State Government that the transfer is for public exigency should not be accepted. It was further submitted by Mr. Mohapatra that the applicant, his wife and widow of the deceased brother of the applicant (who recently died in discharge of his duties as a police officer) are suffering from Diabetic etc. ^{and} are under the treatment of an expert physician at Cuttack and the applicant and his family members would lose that benefits if he is recalled and transferred and posted as Member, Traffic Training School situated at Bhubaneswar.

5. While countering the arguments advanced by Mr. Mohapatra, learned counsel for the applicant it was submitted by Mr. Mohanty, learned Addl. Standing Counsel for the State Government that Government has fullest right to give posting to its officers keeping in view the public exigency and even though the Government has laid down certain guidelines in the form of circulars or letters issued by the Administrative Department relating to transfer and posting of officers, yet in certain cases though guidelines could be deviated keeping in view the public exigency in service and in case there is any deviation, the person aggrieved has no right to claim redress for such deviation because it is a matter between the Government and the competent authority ordering transfer of the incumbent concerned. Therefore, in no circumstances, the order of transfer should be unsettled.

In order to substantiate their respective contentions Mr. Mohapatra, learned counsel for the applicant and the learned Addl. Standing Counsel Mr. Mohanty appearing for the State Government had relied upon certain judgments of the Hon'ble Supreme Court and that of the Hon'ble Orissa High Court. We do not feel any necessity to dilate or discuss the principles of law that have been enunciated in those judgments because the law on the subject is very well settled and the second reason for which we do not want to specifically discuss those principles and express any opinion on questions of fact because of the conclusions we propose to arrive at in the present case.

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6. At the out-set, we may say that there is no malafide etc. pleaded by the applicant against anybody in the Government except that it is stated that one of his colleagues is out to put the applicant into difficulty and is trying hard to dis-lodge him from the present post by adhering to pressures given by the politicians to some how adjust him (the colleague) in the post which has ~~being~~ occupied by the present applicant. We do not propose to give any finding on this aspect of pressurisation by a colleague of the applicant because it is only a bald statement made in the petition and without any proof we cannot accept this statement to be true and correct. However, law is well settled that an order of transfer can be struck down on the ground of malafide. At the risk of repetition, we may say that in the present case there is no pleading to the effect that the order of transfer is backed by malafides. After hearing arguments from the learned counsel for both sides, we are of opinion that the main grounds on which the transfer is sought to be struck down are as follows :-

- (1) Para 11 of Book Circular No.42 has not been taken into consideration while passing the order of transfer and so also the directives of the Government contained in Annexures-7 and 7/1. Emphasis was laid that the case of the applicant was not considered by the Committee constituted to consider the case of transfer during mid term as envisaged

under Annexure-7 and 7/1.

- (2) Personal difficulties of the applicant regarding his illness and the illness of his family members and especially education of the children for which it was submitted by Mr. Mohapatra that exigency of service, if any, would not at all be defeated if the transfer order is given effect to after the academic session of 1988.

7. There cannot be any dispute that it is the Administration who is the competent authority to choose the officer who could properly man a particular post with efficiency and competency. It is equally undisputed that Judiciary cannot step into the shoes of the Executive to adjudicate on this aspect, yet we must say that the difficulties of a particular employee could be taken into consideration by the employer so that the particular officer would not lose his impetus to work. Therefore, Hon'ble Mr. Justice R.N Misra speaking for the Court in the case reported in 1987 Supreme Court Cases (L & S) 275 (Amarchand Dalani vrs. Mr. Justice G.G. Sohani, Acting Chief Justice, High Court of M.P., Jabalpur and others) was pleased to observe that frequent transfer of officers may affect the morale and therefore it should be avoided but subject to exigency of service. Ofcourse, the judgment of My Lord Mr Justice Mishra is in connection with the judicial officers of the Madhya

pradesh High Court. However, the principles laid down by Their Lordships of the Supreme Court could be taken into consideration by the Administration as it was contended before us that the applicant has been transferred twenty-three times during last twenty years. Ofcourse, we are unable to know the correctness of the statement. However, all the points on which the order of transfer is sought to be struck down not being involved with any law and being pure questions of fact and such factual matters should be taken into consideration by the Government which is competent and the forum for considering these facts being the employer, and therefore, without interfering with the discretion of the Government, we would leave the matter to be considered by the Government hoping that the directives contained in Annexures-7,7/1 and Book Circular No.42 would also be considered and thereafter the Government is free to pass any orders according to law as deemed fit and proper. Incidentally we may mention that it was told to us that the representation of the applicant contained in Annexure-3 to cancel the order of transfer is still pending consideration and we hope that the representation would be disposed of within fifteen days from the date of receipt of a copy of this judgment.

8. Thus, the application is accordingly disposed of leaving the parties to bear their own costs and in view of the disposal of the main application, the stay order passed by this Bench stands automatically vacated.

[Signature]
19.1.88
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Member(Judicial)

[Signature]
19.1.88
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Vice-Chairman

B.R. PATEL, VICE-CHAIRMAN

I agree.

Central Administrative Tribunal
Cuttack Bench, January 19, 1988
ROY, SPA.

