

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

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ORIGINAL APPLICATION No.235 OF 1988.

Date of decision : September 9, 1988.

Sri Guru Charan Mishra, son of late Rama Krushna Paramguru,
Divisional Accountant, Office of the Executive Engineer,
Ganjam R & B Division No. II, Berhampur.

... Applicant.

Versus

1. Union of India, represented through Account General (A & E),
Orissa, Bhubaneswar.
2. Senior D.A.G. (Admn.) (A & E), Orissa, Bhubaneswar-1.
3. D.A.G. (Works), Orissa, Puri-2.
4. M.C.Sengupta , Deputy Finance Adviser, Calcutta Metropolitan
Swerage Development Authority, Calcutta.
5. G.B.Rao Dora, Ex-Engineer, Ganjam R & B Division No.2,
Berhampur-5.

..... Respondents.

M/s J.Das, B.K.Sahoo
and S.Mallick, Advocates

.. For Applicant.

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)

1. Whether reporters of local papers may be permitted to
see the judgment ? Yes .
2. To be referred to the Reporters or not ? /N
3. Whether Their Lordships wish to see the fair
copy of the judgment ? Yes .

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 petitioner prays to quash the order passed by the competent authority transferring the petitioner from Berhampur and posting him at Bhubaneswar .

2. Shortly stated the case of the petitioner is that he is the Senior Divisional Accountant attached to the Office of the Executive Engineer ,Ganjam R & B Division No.II, Berhampur. Initially thepetitioner was transferred to Rourkela . He made a representation on his health ground and therefore his transfer to Rourkela was cancelled and he was again transferred to Bhubaneswar. Being aggrieved by this order the petitioner has come up before this Bench with the aforesaid prayer .

3. In their counter , the Opposite Parties maintained that no illegality having been committed by this order of transfer, it should not be unsettled.

4. We have heard Mr. J.Das, learned counsel for the petitioner and Mr. Ganeswar Rath, learned Additional Standing Counsel for the Central Government at some length. Mr. Das submitted before us that the petitioner is now suffering from Malignancy. The petitioner is under treatment at Berhampur though heoccasionally visits Vellore and gets himself checked up at Vellore. According to the petitioner, his transfer to Bhubaneswar may create some difficulty for his treatment as the doctors at Berhampur have been acquainted with the complications

in the health of the petitioner . Therefore, Mr. Das
invited ^{submitted} ~~our~~ attention that on compassionate grounds,
the transfer of the petitioner to Bhubaneswar should be
cancelled . On the other hand, it was submitted by Mr.
Ganeswar Rath, learned Addl. Standing Counsel that the
department has been taking a sympathetic view over the
petitioner because of his ailment but there being no
post at Berhampur and the authorities are in a great
difficulty to give him posting at Berhampur though the
authorities are seriously thinking to post the petitioner
at Cuttack in place of a particular officer who is due
to retire on superannuation in the end of this month.
Mr. Das submitted that the petitioner is no doubt grateful
to the authorities for the compassionate view that they
have already taken over the petitioner but posting of the
petitioner at Cuttack may deprive him of the benefit
of the doctors at Berhampur who are well acquainted with the
complications of the ailment of the petitioner and further
more it would be utterly difficult on the part of the
petitioner in the present state of health to find out a
suitable accommodation at Cuttack and get treatment. That
apart, Mr. Das further submitted that the daughter of the
petitioner who is a student in the sixth year class of the
Berhampur University could better look after her father
i.e, the present petitioner which she can do if the
petitioner is posted at ^{Berhampur} ~~Cuttack~~ . Either the daughter should
come to Cuttack for the well being of the father or the
father and his daughter should stay together at Berhampur
for the betterment of the father and it is further stated

that the petitioner has his own house at Berhampur.

We have perused the averments in the application under section 19 and also the averments in the counter and we have given our anxious consideration to the arguments advanced by Mr. Ganeswar Rath, learned Additional Standing Counsel that the Cancer Institute having functioned at Cuttack, the petitioner would get better treatment at Cuttack. Taking into consideration all the aforesaid facts and circumstances, we are of opinion that the petitioner would really be in difficulty to find out a suitable accommodation at Cuttack and depriving the petitioner of the company of his daughter to look after him would tell upon the mental condition of the petitioner and it would seriously affect him so much so the ailment may be accelerated. The fact that doctors have already been treating him at Berhampur and acquainted with the complications heavily weighs with us and therefore we hereby quash the order passed by the competent authority transferring the petitioner from Berhampur to Bhubaneswar and we would direct that the competent authority may find out a suitable post for the petitioner at Berhampur and post him at Berhampur especially because we are happy to know that the departmental authorities have been taking a very compassionate view all along over their employee. Mr. Rath submitted that there is no vacancy at Berhampur because two persons are to retire in the year 1989. Ailment of the petitioner should take preference over the retirement of a particular employee in the year 1989. Therefore, we would say that the

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competent authority would consider all these aspects and give the petitioner a posting at Berhampur.

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

kgase 9.9.88
.....
Member (Judicial)

B.R. PATEL, VICE CHAIRMAN,

9 agree.



Amr 9.9.88
.....
Vice Chairman.

Central Administrative Tribunal,
Cuttack Bench.
September 9, 1988/Roy, Sr.P.A.