

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.**

Original Application No.201 of 1989.

Date of decision: July 25, 1989.

Bhubaneswar Nayak, son of late Damodar Nayak,
at present working as Head Record Officer,
R.M.S. 'N' Division, Cuttack.

... Applicant.

Versus

1. Union of India, represented through the Director General of Postal Services, DAK -TAR Bhawan, New Delhi-1.
2. Chief Post Master General, Orissa Circle, Bhubaneswar.
3. Senior Superintendent, R.M.S. 'N' Division, Cuttack.
4. Shri Basanta Kumar Samanta, Head Record Officer, RMS 'K' Division, Dist/P.O. Jharsuguda, Dist.Sambalpur.

... **Respondents.**

For the applicant : M/s.J.Das, B.S.Tripathy,
B.K.Sahoo, K.P.Misra,
S.Mallick, S.K.Purohit,
P.K.Deo, Advocates.

For the Respondents 1 to 3: Mr. Tahali Dalai,
Addl. Standing Counsel (Central)

For the Respondent No.4. : Mr. Deepak Misra, Advocate.

C O R A M :

THE HON'BLE MR. B. R. PATEL, VICE-CHAIRMAN

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

JUDGMENT

B.R.PATEL, VICE-CHAIRMAN, In this application filed under section 19 of the Administrative Tribunals Act, 1985 (hereinafter to be referred to as the Act), the applicant who is now working as Head Record Officer in Railway Mail Service 'N' Division, Cuttack challenges the transfer order transferring him to Railway Mail Service 'K' Division, Jharsuguda. A copy of the transfer order is at Annexure-1.

2. The respondents have maintained in their counter that due to non-availability of vacancy it has not been possible to adjust the applicant suitably and one Shri Basanta Kumar Samanta, who is Respondent No.4 in this case had to be posted in place of the applicant to Cuttack because both the applicant and Respondent No.4 had completed their tenure of 4 years in their present place of posting. Learned counsel for the Respondent No.4 has submitted that the respondent No.4 will also retire early in 1991 like the applicant.

3. Mr.B.S.Tripathy, learned counsel for the applicant has drawn my attention to the instructions issued by the Director General, Posts and Telegraphs, bearing No.69/4/79-SPB dated 22.5.1979 in the matter of rotational transfers. Particularly, Mr.Tripathy has referred to paragraph 4(iii) of the aforesaid instructions. Paragraph 4(iii) reads as follows :

" Officials who are left with 2 years or less for superannuation should ordinarily be

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exempted from rotational transfers. "

(underlining is for emphasis)

On the basis of these instructions Mr.Tripathy has argued that since the applicant would be retiring in January, 1991 i.e. within two years, his case is squarely governed by these instructions and he should not be disturbed from his present place of posting. Learned counsel for Respondent No.4, on the other hand, brought to my notice the instructions subsequently issued by the Director General, Postal vide his letter No.69/4/79 SPB dated 12.11.1981 and refers to paragraph 10 of the Instructions which reads as follows :

" The staff who have two years or less to go on 30th September of each year before superannuation may be exempted from rotational transfer as far as possible and also giving posting in their choice to the extent administratively feasible. "

(underlining is for emphasis)

and argues that the transfer is always ^a the matter for the Department to decide in consideration of the exigencies of administration. Moreover, learned Counsel for Respondent No.4 submits that those persons who have two years or less to retire should be considered more on humanitarian ground and there cannot be any obligation on the part of the Department to ~~reclaim~~ ^{post} or to place them to a place of their choice. The interest of administration should no doubt override the ~~consideration~~ ^{than} the personal ^{interest} ~~inconvenience~~ ⁱⁿ of the employees. But in the present case, both Respondent No.4 and the applicant are on the same footing as both of them will be retiring within two years.

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Respondent No.4 retiring in February 1991 and the applicant in January, 1991 and both need some adjustment. The applicant wants to remain at Cuttack and the Respondent No.4 wants to come to Cuttack ~~and~~ ^{but} there is only one ~~post~~ ^{place} available at Cuttack. Mr. Tahali Dalai, learned Additional Standing Counsel (Central) has submitted that there are infact only three posts available; one at Cuttack, 2nd post at Berhampur and the third at Jharsuguda. Mr. N.B. Toppo is at Berhampur and he will be completing his term of four years in 1990. As such, Mr. Dalai states that there is no way to accommodate both the applicant and Respondent No.4 at the same place i.e. at Cuttack. This is an administrative matter and it should be left to the Department to decide whether it may be possible to transfer Mr. N.B. Toppo, ~~if he is willing~~, to Jharsuguda, without waiting for completion of his tenure but it depends on the willingness of Mr. Toppo and the Department may ascertain the willingness of Mr. Toppo and if he is willing, he may be posted ^{to} Jharsuguda in which event the competent authority may decide as to ~~whether~~ of the two persons i.e. the applicant and Respondent No.4 who would be posted ^{to} Cuttack and ^{who will} ~~to~~ Berhampur. To ~~enable~~ ^{enable} the Department to consider the whole matter afresh, Annexure-1 is quashed. The whole process should be completed within two months from the date of receipt of a copy of this judgment.

4. Thus, this application is accordingly disposed of

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leaving the parties to bear their own costs. The stay order granted by this Bench on 16.5.1989 stands automatically vacated.



Ramulu
.....
Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 25, 1989/Sarangi.