

Central Administrative Tribunal,
Cuttack Bench, Cuttack.

O.A.No.257 of 1989.

Date of decision - 31st August, 1989.

Baidhar Padi, son of late Pranabandhu Padhi,
Sub-Postmaster, Fakirpur Sub-Office,
Keonjhar Division, Dist- Keonjhar.

.... Applicant

Versus.

1. Union of India, represented through Secretary, Department of posts, Dak Bhawan, New Delhi
2. Superintendent of Post Offices, Keonjhar Division, Dist-Keonjhar.

.... Respondents

M/s. S.Kr.Mohanty and S.P.Mohanty For Applicant

Mr. Ganeswar Rath, Senior Standing Counsel (Central) ... For Respondents

CORAM :

THE HONOURABLE MR. B.R. PATEL, VICE-CHAIRMAN

AND

THE HONOURABLE MR. N. SEN GUPTA, 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.

B.R. PATEL, VICE- CHAIRMAN. The applicant is a Postal Assistant.

By memo No.B-3/Ch-II dated 25.4.85 issued by the Superintendent of Post Offices, Keonjhar Division, he was transferred from Anandapur Sub-office to Fakirpur Sub-office vide Annexure-1. He joined the post at Fakirpur on 17.6.86. By order dated 23.4.87 (Annexure-2) he was transferred from Fakirpur S.O. to Salapada S.O. where he joined on 12.6.87. By order dated 31.5.89 (Annexure-3) he was transferred back to Fakirpur S.O. He has moved this Tribunal in this application for orders to quash this latest order of transfer i.e. the order at Annexure-3.

2. The respondents in their counter have maintained that the transfer is an incidence of service and that the applicant has been transferred from Fakirpur to Salapada and back to Fakirpur in the public interest and in view of exigencies of administration.

3. We have heard Mr. S.Kr.Mohanty, learned counsel for the applicant and Mr. Ganeswar Rath, learned Senior Standing Counsel for the Central Government and perused the relevant papers. Mr. Mohanty has urged that frequent transfer is against the prescribed rules and transferring an officer from place to place at frequent intervals is demoralising and the demoralised officers cannot ensure good administration and ultimately the interest of the general public suffers. In view of this, according to Mr. Mohanty, there are rules prohibiting frequent transfers of officers. He, in this connection, drew our attention to Rule 61-A in Chapter-II of the Posts and Telegraphs Manual.

[Signature]

Volume-IV Fifth edition, corrected upto December, 1975.

This rule reads as follows :

" 61-A. Except when a longer tenure of service against a post has been specifically prescribed or is authorised by orders of the Head of the Circle in any special contingency, no official shall be retained in the same branch, in the case of a First Class Head Office or in the same office, in the case of other post offices, for more than 5 years and shall not be eligible for posting back to the same branch or office, as the case may be until after three years of the date of his last posting there."

Mr. Mohanty has therefore urged that the applicant should be kept at Salapada Sub-office until he completes five years. At any rate, according to Mr. Mohanty, the order at Annexure-3 is violative of the rule quoted above and as such cannot be sustained. He also drew our attention to the judgment of the Principal Bench of the Central Administrative Tribunal, Delhi in the case of Kamlesh Trivedi v. Indian Council of Agricultural Research and another, reported in 1989(1)ATJ(Vol-6 part-5 May) page 545. He referred particularly to the following lines of para-8 at page 551 :

" A very strong case would have to be made out to justify the deviation from the declared policy. Like every other administrative order of transfer also must conform to rules, if any, framed, and policy, if any, enunciated by the Government. Even if there are none, an order of transfer cannot be arbitrary or discriminatory, for that is a Constitutional requirement which every order must satisfy."

He also referred to the judgment of the Supreme Court in the case of B. Varadha Rao v. State of Karnataka and others, (AIR 1986 SC 1955). He particularly refers to the following lines of paragraph-6 of that judgment :

[Signature]

" 6. One cannot but deprecate that frequent unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to every body equally."

4. In this connection, Mr. Mohanty drew our attention to Annexure-4 which is a copy of the representation dated 3.6.89 made by the applicant to the Superintendent of Post offices, Keonjhar Division. In paragraph-4 of this representation, the applicant has stated as follows :

" 4. My two daughters are reading in Women's College at Salapada who are residing with me. If I will be transferred to Fakirpur where there is no college and the distance from Fakirpur to Salapada is 7 KM which is not in connection with the bus."

Relying on the judgment of the Supreme Court and the referred to above representation of the applicant, Mr. Mohanty has urged that frequent transfer at shorter intervals has caused irreparable harm to the applicant and has, in fact, the effect of uprooting his family. He has very strongly contended that in case the applicant is transferred to Fakirpur where there is no college, the education of his daughters will be disrupted and irreparable harm will be done to the future of his children. Mr. Ganeswar Rath, on the other hand, has maintained that as the applicant is a very experienced officer, in the public interest he has been transferred to Fakirpur which is not very far from Salapada.

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5. Keeping in view the dictum of the Supreme Court and the judgment of the Principal Bench of the Central Administrative Tribunal referred to above, we are of the view that the transfer of the applicant vide Annexure-3 is not only against the provision of rule 61-A of Posts and Telegraphs Manual but also against the dictum of the Supreme Court and as such we quash the order at Annexure-3 and direct that the applicant should be allowed to continue at Salapada till he completes his tenure as visualised in Rule 61-A.

6. The application is accordingly allowed, leaving the parties to bear their own costs.

Ramcharan 31.8.89
VICE - CHAIRMAN.

N. SEN GUPTA, MEMBER (JUDICIAL).

I agree.



N. Sen 31-8-89
MEMBER (JUDICIAL)

Central Administrative Tribunal,
Cuttack Bench, Cuttack,

The 31st August, 1989/Jena, Sr.P.A.