

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A.No.272 of 1989

(Decided on 2nd August, 1989) .

Harihar Sethi, son of Narsingh Sethi,  
Working as Clerk Grade -I,  
All India Radio, Cuttack,  
At/P.O./Dist-Cuttack.

... Applicant

Versus.

1. Union of India, represented  
through the Secretary,  
Ministry of Information and  
Broadcasting, New Delhi.
2. Deputy Director General,  
Eastern Region, All India Radio,  
Akashvani Bhavan, 3rd Floor,  
Calcutta- 700 001.
3. Station Director,  
All India Radio, Cuttack,  
At/P.O./Dist-Cuttack.

... Respondents

Present :

M/s. L.Mohapatra and  
D.K. Misra

... For Applicant

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

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C O R A M.

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

A N D

THE HONOURABLE MR. N. SEN GUPTA, MEMBER (JDL.)  
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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? <sup>NO</sup>
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.

B.R. PATEL, VICE-CHAIRMAN.

In this application filed under

section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order of transfer dated 19th June, 1989 a copy of which is at Annexure-R-1.

2. The facts of the case, in short, are that the applicant is a Clerk Grade I working in the All India Radio, Cuttack. He has been transferred to Sambalpur. He has prayed in his application that the transfer order should be quashed and he should be retained for some time more at Cuttack.

3. The respondents have filed their counter in which they have maintained that the transfer is an incidence of service and no officer should have ordinarily any right to challenge the order of transfer.

4. We have heard Mr. D.K. Misra, learned counsel for the applicant and Mr. Ganeswar Rath, learned Additional Standing Counsel for the Central Government). Both Mr. Misra and Mr. Rath have drawn my attention to sub-paragraph (e) of paragraph-2 of the counter which reads thus :

" 2. e) That the transfer of the officials contained in Annexure-R-1 has caused the immediate promotion of 3 Clerk Gr.IIs to the post of Clerk Gr.I and one Clerk Gr.I to the post of HC Accountant. If the Annexure-R-1 is quashed, it will adversely affect the fundamental rights of these four persons for their no fault."

*Mishra*

According to Mr. Misra, it is clear from this paragraph that the transfer of the applicant has been made on extraneous consideration. He has further submitted that there are Clerks Grade I at Cuttack for a longer period than the applicant and instead of transferring them, they have transferred him, which shows a mala fide intent of the administration. Mr. Misra<sup>has</sup> also drawn our attention to the instructions of the Directorate General, All India Radio, bearing No.11019/22/81-Scor dated 4th/7th August, 1981 which has laid down the transfer policy. A copy of these instructions is at Annexure-2. Mr. Misra has referred to the instructions which says that transfer, as a normal rule, of persons with the longest continuous stay at a station should first be transferred. This has been laid down in paragraph-IX of the instructions. The relevant portion of this paragraph reads as follows :

" When the question of transfer is considered, as a normal rule, a person with the longest continuous stay at the station, irrespective of the rank(s) held by him earlier, should ordinarily be transferred first. .... "

(underlining is for emphasis)

These instructions thus do not impose a complete ban on transfer of an employee who has less continuous service at a station. Transfer is a matter for the Administrative Department to decide on the ground of requirement of administration. There may be situations where the Administration will be compelled to transfer officers in preference to those who have stayed in a station for longer period. Beyond sub-paragraph (e) of paragraph-2 of the counter, Mr. Misra has not pointed out any other

*Amul*

instance which will go to support his contention that there was mala fide intent on the part of the Administration. As such we do not accept his contention that the Department has transferred the applicant on any extraneous consideration or mala fide intent. Mr. Misra has, of course, averred that whenever any departure is made from the guidelines given in the instructions referred to above, the orders of the competent authority as laid down in the instructions should be obtained. In this case, according to Mr. Misra, the authority who has transferred the applicant is not the highest authority and as such the guidelines have been departed from. We are not in a position to accept the contention of Mr. Misra because paragraph-IX of the instructions which we have quoted above categorically mentions that a person with longest continuous stay at a station should, as a normal rule, and ordinarily be transferred first. Transfer of a person with less continuous stay at a station will be made only where there is any need for such transfer from one station to another. In view of this, it is not necessary that usually in every case of transfer<sup>which</sup>/~~is~~ is done according to the requirement of the Administration, orders of the highest authority should be obtained. Mr. Rath has also pointed out that the Deputy Director General, Eastern Region, All India Radio who has passed the order of transfer of the applicant is the highest authority in this region and as such the instructions have been fully complied with. Mr. Misra is not prepared to accept the contention of Mr. Rath on the ground that the guidelines have been laid down by

*Amul*

the Director General, All India Radio, New Delhi and any departure from the instructions should have his sanction and that the Deputy Director General, Eastern Region is a subordinate authority. But without going into this aspect as we have pointed out above, for ordinary requirement of the Administration, a competent authority can transfer a person from one station to another. In view of this, we do not find any reason to interfere with the orders of transfer of the applicant passed by the Deputy Director General, Eastern Region (Annexure-R-1). Mr. Mishra, however, has submitted that due to certain difficulties, particularly, ~~sickness~~ illness of his father, the applicant is not in a position to move to Sambalpur immediately and he has asked for some time. Mr. Rath has no objection to this. We would therefore direct the applicant to move the appropriate authority with such prayer, and we feel that the difficulties of the applicant are genuine. At any rate, some time is necessary to enable the applicant to make necessary arrangement for leaving the station and joining at his new place of posting. In our view, therefore, one month's time to enable the applicant to proceed <sup>to</sup> his new station will not be unreasonable, and it will be possible for the Department to grant it.

5. The application is accordingly disposed of, leaving the parties to bear their own costs.

*[Signature]*  
Vice-Chairman. 2.8.89

N. SEN GUPTA, MEMBER (JUDICIAL)

I agree.

Central Admn. Tribunal, Cuttack  
2nd August, 1989/Jena/SPA

*[Signature]*  
2/8/89  
Member (Judicial).

