

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.382 of 1989.

Date of decision : March 22 ,1990.

Khetra Mohan Biswal ... Applicant.

Versus

Regional Provident Fund
Commissioner and others ... Respondents.

For the applicant ... M/s. B.B.Ratho,
B.N.Rath,
B.Senapati,
S.Ghose, Advocates.

For the respondents ... Mr.Tahali Dalai,
Addl. Standing Counsel (Central)
Mr.P.N.Mohapatra,
Addl. Standing Counsel (Central)

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C O R A M:

THE HON'BLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

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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 ? No
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

J U D G M E N T

N.SENGUPTA, MEMBER (J)

In this application, the applicant has prayed for quashing the order of transfer dated 8.9.1989 copy of which is at Annexure-6.

N. Sen Gupta

2. The allegations of the applicant are that he is working as Head Clerk in the Office of the Regional Provident Fund Commissioner, Bhubaneswar. The regional office is located at Bhubaneswar and for facilitating the work some sub-regional offices were to be opened. A sub-regional office was opened in 1984 at Rourkela. As the major part of the work is to be transacted at Bhubaneswar, and the bulk of the staff are to remain there, a set of instructions with regard to transfer of staff to the Sub-Regional Office at Rourkela was issued. The instructions concerning the Head Clerks, the total cadre strength of which is 37, are that a list of such Head Clerks was to be prepared in order of seniority and they were to be posted to the Sub-Regional Office on rotational basis for one year from the date of their posting in the Sub-Regional Office whereafter they were to be brought back to the Regional Office except when the individual concerned desires to continue at the Sub-Regional Office. In 1984 a list of persons to be transferred to the Sub-Regional Offices (S.R.O. for short) was drawn up and the applicant's name was included in that list. To the S.R.O. 9 Head Clerks were transferred but as at that time he (the applicant) and two others were holding Offices of employees union, according to a circular letter of October, 1983 he was exempted from being transferred. At the rate of 9 at a time, a Head Clerk was to be transferred to the S.R.O. at intervals of roughly four years. However, in May, 1987, he received an order of transfer and in compliance with the directions contained in that letter, he

Mr. Singh
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joined S.R.O. at Rourkela on 6.7.1987 and came back to the Regional Office on being relieved from S.R.O. on 5.7.1988. One year two months thereafter he received the impugned order of transfer to S.R.O. dated 8.9.1989. This order of transfer not being in accordance with the instructions contained in the circular letter, is void and illegal and hence it needs to be quashed.

3. The respondents in their counter have maintained that the applicant was promoted to the Grade of Head Clerk on 13.1.1984. There were initially only 32 Head Clerks in the Office of the Regional Commissioner and after opening of the S.R.O. 8 Head Clerks were transferred to the S.R.O., Rourkela in the first phase and subsequently one more Head Clerk was transferred to the S.R.O., Rourkela. Respondents admit that the applicant was exempted from being transferred but the exemption was only for the year 1984-85. After that he was transferred in 1987 to S.R.O. as his turn on the basis of seniority came then. With regard to the averments of the applicant that his turn for transfer to S.R.O., Rourkela could not have come prior to 1987, the respondents' case is that as some of his seniors were promoted to the next higher rank, his position in the order of seniority went up and after completion of the first cycle of transfers, his term again came in 1989 and that is how the impugned order was passed.

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4. After the filing of the counter, the applicant filed a rejoinder wherein he has stated that the impugned transfer is neither on the basis of seniority nor on the basis

of turn of transfer. The instructions being meant not to affect the family life of the concerned clerks, it is really improper to again disturb him by a transfer after only one year and two months. His case is that he is one of the junior Head Clerks. Therefore, he could not be transferred on the basis of seniority. In the rejoinder he has reiterated his case that really his turn would have fallen 4 years after his transfer in 1987. To the rejoinder he has annexed a revised seniority list after the decision by this Tribunal with regard to the question of seniority in a previous application. After the filing of the rejoinder the respondents have filed additional counter in which they have averred that in the year 1987, the position of the applicant in order of seniority was 28 and the first cycle of transfer was completed in the year 1988. After that a fresh seniority list of persons was framed and in accordance therewith the applicant was transferred to S.R.O., Rourkela. In this seniority list the position of the applicant is 20th. All the 19 persons senior to the applicant had been transferred prior to him. Therefore, the grievance of the applicant is without substance. Three of the Head Clerks were transferred and posted in the Internal Audit party of the Organisation. So three others were promoted as Head Clerks, and all of them are juniors to the applicant. Since the applicant's transfer order has been made in the public interest, the applicant cannot have any grievance against it. The respondents have annexed previous seniority list which is Annexure-R/1. The second seniority list which is Annexure-R/2 and Annexure-R/3 show the dates of the second transfer of the Head Clerks to the S.R.O.

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5. Mr.B.N.Rath, learned counsel for the applicant has contended that when there are 37 posts of Head Clerks out of which 9 are to be posted to S.R.O., Rourkela, in order to exhaust the whole list about 4 years would be necessary as each of the persons transferred is to remain for one year at the view of S.R.O. He has further contended that in the number of persons to be transferred, the turn of the applicant for a transfer could not have come prior to 1991. His further contention is that on a bare reading of Annexures-R/1 to R/4 it would be evident that the Department has ~~exercised~~ pursued a pick and choose policy in the matter of transfer of Head Clerks to the S.R.O.

6. Mr.P.N.Mohapatra, learned Addl. Standing Counsel (Central) appearing for the respondents has contended that as the Head Clerks are to be transferred to the S.R.O. according to their seniority and as all the 19 who are senior to the applicant have already been transferred, the applicant cannot make a grievance or say that he is not to be transferred. During the course of argument it is found that some persons who were promoted as Head Clerks in the vacancies arising in the cadre of Head Clerks have not yet been transferred and against those persons in Annexure-R/3 it has been remarked that transfer is yet to be effected. From Annexure-R/3 it would be found that there are persons such as R.K.Patnaik, who have not been transferred for the second time, even though that person is definitely senior to the applicant. From Annexure-R/3 it would be found that before the applicant was relieved from S.R.O., Rourkela some persons had been promoted from the lower ranks to the grade of Head Clerks and they have not been transferred.

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Mr. Mohapatra very strenuously contended that their ~~turn~~ cannot come unless the applicant's turn ~~is~~ over. To put it in other words, Mr. Mohapatra's contention is that without exhausting the first list, the Department is free to draw up a list of persons to be transferred to S.R.O., Rourkela and that the first list was exhausted as would be evident from Annexure-R/1 on 17.11.1987. From Annexure-R/3 it would be found that Shri K. Barik and Shri R.K. Patnaik both of whom are senior to the applicant had not been transferred. All that Mr. Mohapatra submits ~~in~~ this regard is that their transfers were ~~not~~ effected in the interest of public service and the Administration has the right to those persons to man a particular post. Therefore, the applicant cannot question the non-transfer of the two persons. No doubt it is true that there may be some deviations from the normal rule but such deviations should be properly explained otherwise non-transfer of a person ^{is} ~~to~~ be taken to be arbitrary and not supported by any reason. From the annexures to the counter it is found that one L.D. Oram who was exempted from being transferred earlier has not been transferred thereafter. In this regard it is submitted by Mr. Mohapatra that the said person held offices in two unions and therefore, he could not be transferred in view of the circular of October, 1983. Whether this L.D. Oram has not been transferred for this reason has not been mentioned in the counter. On going through the annexures to the counter it would be found that there have been deviations and many omissions have remained unexplained. In such circumstances, it is not possible to give a positive finding but however it can safely be said that from the materials

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on record, the order of transfer cannot be sustained.

7. In the result, the order of transfer, Annexure-6 is quashed. The respondents should prepare a list taking into account the seniority of persons and the list should also contain the names of persons who are likely to be promoted by the time of its finalisation and ^{after} ~~if~~ all the persons working as Head Clerks are transferred, next turn should begin. The fresh list be prepared accordingly and if after preparation of such a list, the turn of the applicant falls, he may be transferred. No costs.



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Member (Judicial)