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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH :
CUTTACK

1. ORIGINAL APPLICATION NO.140 of 1990
2. ORIGINAL APPLICATION NO.144 of 1990
3. ORIGINAL APPLICATION NO.156 of 1990
4. ORIGINAL APPLICATION NO.155 of 1990
5. ORIGINAL APPLICATION NO.167 of 1990

Date of Order: June 19, 1990

BETWEEN:

1. Mr. Khetra Mohan Biswal
2. Mr. Benudhar Bahera
3. Mr. Laxmidhar Oram
4. Mr. Batakrishna Jena
5. Smt. Aratirani Roy Chudamani

respectively .. Applicant(s)

AND

1. The Regional Provident Fund Commissioner,
Bhubaneswar
2. The Central Provident Fund Commissioner,
New Delhi
3. The Central Board of Trustees,
New Delhi.

.. Respondents

For Applicant(s) : Mr. K.B.Panda, Mr. H.P.Rath and
Mr. R.C.Mohanty .. Advocates

For Respondents : Mr. P.N.Mohapatra, Addl. Standing
Counsel for Central Government.

CORAM: Hon'ble Shri R.Balasubramanian, Member (Admn.)
Hon'ble Shri N.Sen Gupta, Member (Judl.)

1. Whether Reporters of local papers may be allowed to
see the Judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy
of the Judgment?
4. Whether it needs to be circulated to other Benches
of the Tribunal?
5. Remarks of Vice-Chairman on columns 1,2,4 (to be
submitted to the Hon'ble Vice Chairman where he is
not on the Bench).

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JUDGMENT OF THE BENCH DELIVERED BY THE HON'BLE SHRI R.BALA-SUBRAMANIAN, MEMBER (ADMN.)

The following applications had been filed under Section 19 of the Administrative Tribunals Act by five applicants against the Regional Provident Commissioner, Bhubaneswar and two others. Since the cause of action and the prayer are the same in all the five cases, we deal with all the five cases in this single Judgment. The particulars of the five cases are as below:-

- (1) O.A.No.140 of 1990 - Mr. Khetra Mohan Biswal Vs. Regional Provident Fund Commissioner, Bhubaneswar and 2 others.
Counsel for the applicant : Mr. K.B.Panda, Advocate
Counsel for the respondents: Mr. P.N.Mohapatra, Addl.CGSC
- (2) O.A.No.144 of 1990 - Mr. Benudhar Bahera Vs. The Regional Provident Fund Commissioner, Bhubaneswar and another.
Counsel for the applicant : Mr. H.P.Rath , Advocate
Counsel for the respondents : Mr. P.N.Mohapatra, Addl.CGSC
- (3) O.A.No.156 of 1990 - Mr. Laxmidhar Oram Vs. The Regional Provident Fund Commissioner, Bhubaneswar and 2 others.
Counsel for the applicant : Mr. K.B.Panda, Advocate
Counsel for the respondents: Mr. P.N.Mohapatra, Addl.CGSC
- (4) O.A.No.155 of 1990 - Mr. Batakrishna Jena Vs. The Regional Provident Fund Commissioner, Bhubaneswar and 2 others.
Counsel for the applicant : Mr. K.B.Panda, Advocate
Counsel for the respondents: Mr. P.N.Mohapatra, Addl.CGSC
- (5) O.A.No.167 of 1990 - Smt. Aratirani Roy Chudamani Vs. The Regional Provident Fund Commissioner, Bhubaneswar and another.
Counsel for the applicant : Mr. R.Ch.Mohanty, Advocate
Counsel for the respondents: Mr.P.N.Mohapatra, Addl.CGSC

All these applicants are working as Head Clerks in the office of the Regional Provident Fund Commissioner at Bhubaneswar.

In the year 1984, the respondents opened a Sub Regional

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Office at Rourkela. There were not many volunteers to move over to Rourkela. The staff had to be transferred from the Regional Office at Bhubaneswar. The Department laid down certain guidelines for various cadres as to how the transfer to Sub Regional Office should be made on rotational basis. Three of the applicants, Sl.No.1,2 and 3, had served one year term at Rourkela and they were again transferred for the second time. Two of them (Sl.No.1 and 2) moved the Tribunal vide OAs 382 and 451 of 1989 and got the order quashed and also got certain directions from the Tribunal. The respondents had again issued the transfer order dated 11.4.1990 by which these three officials viz., Mr. Khetra Mohan Biswal, Mr. Benudhar Bahera and Mr. Laxmidhar Oram have again been transferred to Rourkela. It is this impugned order which these three applicants pray for quashing.

2. The other two applicants viz., Mr. Batakrishna Jena and Smt. Aratirani Roy Chudamani are transferred for the first time by another order dated 11.4.1990. These two applicants also seek quashing of the impugned order. The brief particulars of the five cases are as follows:-

O.A.No.140 of 1990 - Mr. Khetra Mohan Biswal - Applicant

The applicant was promoted as Head Clerk on 13.1.84. He was ordered first in 1984 on transfer to Rourkela. By virtue of being a Union office bearer, he was entitled to be exempted from transfer for one year and accordingly the

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transfer was not effected. He was transferred in 1987, completed the tenure at Rourkela and on 5.7.1988 returned to the Regional Office at Bhubaneswar. By an order dated 8.9.1989 he was again transferred to Rourkela. He approached the Tribunal vide O.A.No.382 of 1989 and the Tribunal quashed the order and gave certain directions to the respondents vide its order dated 22.3.1990. The respondents have again issued an order dated 11.4.1990 transferring the applicant to Rourkela. The applicant wants this order to be quashed.

O.A.No.144 of 1990 - Mr. Benudhar Bahera - Applicant:

This applicant was also promoted as Head Clerk on 13.1.1984. He was also transferred to Rourkela in 1984 but that transfer was not carried-out for administrative reasons. He was again transferred in 1987 and brought back to Bhubaneswar in 1988. On 23.10.1989 he was transferred to Rourkela for second time. He approached the Tribunal vide O.A.No.451 of 1989 and in its order dated 22.3.1990, this Bench quashed the order and issued certain directions to the respondents. The respondents, however, issued another order dated 11.4.1990 transferring him to Rourkela. It is this order that the applicant wants to be quashed.

O.A.No.156 of 1990 - Mr. Laxmidhar Oram - Applicant

The applicant was promoted as Head Clerk on 14.6.1982. He was transferred to Rourkela vide order dated 5.12.1988. He completed his tenure in Rourkela and returned to Bhubaneswar on 19.3.1990. Within three weeks, another order has

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been issued on 11.4.1990 posting him to Rourkela. He prays that this order dated 11.4.1990 be quashed.

D.A.NO.155 of 1989 - Mr. Batakrishna Jena - Applicant:

The applicant was promoted as Head Clerk on 4.9.1986. He was reverted as Upper Division Clerk on 31.7.1989 and was again promoted as Head Clerk on 1.8.1989, the next day. While serving as Head Clerk, he was transferred to Rourkela in July 1987. Since he was Union office bearer, he was entitled to immunity and ^{the} transfer was not carried out. Vide order dated 11.4.1990, the applicant is transferred to Rourkela for the first time. He has prayed that this impugned order dated 11.4.1990 transferring to Rourkela be quashed.

D.A.No.167 of 1990 - Smt. Aratirani Roy Chudamani - Applicant:

The applicant was promoted as Head Clerk on 20.1.1985. Vide order dated 11.4.1990, she is transferred for the first time to Rourkela. She had pleaded for retention in Bhubaneswar itself on the ground that as a lady she will not be able to maintain separate establishment at Rourkela and also on the ground of ill health. She prays for quashing the order dated 11.4.1990.

3. The respondents have issued detailed guidelines on how transfers between the Regional Office and the Sub

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Regional Office (in this case between Bhubaneswar and Rourkela) are to be regulated. When aggrieved by the order dated 23.10.1989 transferring them to Rourkela for the second time, S/Shri Khetra Mohan Biswal and Benudhar Bahera approached this Tribunal for relief vide O.A.No.382 of 1989 and O.A.No.451 of 1989. The cases had been discussed in considerable detail in the Judgments thereof. This Bench remarked that it was not possible to give a positive finding but based on the materials on record quashed the transfer order. The Bench also directed that the respondents should prepare a list taking into account the seniority of persons and that list should also contain the names of persons who are likely to be promoted by the time of its finalisation and after all the persons working as Head Clerks are transferred, next turn should begin. They also directed that if after the preparation of such a list, the turn of the applicants falls, they may be transferred. Such a direction had to be given because various lists prepared by the respondents were confusing. The direction given in the two O.As was quite clear.

4. The respondents had filed counters to O.A.Nos.140 of 1990 and 144 of 1990. In these counters, they have pointed out that the applicants are liable for transfer anywhere in India and that they had issued the orders dated 11.4.1990 in pursuance of the directions of the Bench in its decision dated 22.3.1990 in O.A.Nos.382 and 451 of 1989.

In the counter, they are talking of two cycles. According to them the first cycle was completed on 17.11.1987 and the 2nd cycle was commenced on 29.2.1988. It is their case that the transfer of Mr. Khetra Mohan Biswal and Mr. Benudhar Bahera already effected is to be treated as in the first cycle. The second cycle having commenced on 29.2.1988 and these two officials being seniors, their turn has come though in quick succession. In the impugned order dated 11.4.1990 they had indicated that the three officials viz., S/Shri Khetra Mohan Biswal, Benudhar Bahera and Laxmidhar Daram are senior most in the second cycle and are transferred in the light of the Tribunal's direction in O.A.Nos.382 and 451 of 1989. In the case of Shri Bata-krishna Jena and Smt. Aratirani Roy Chudamani, the transfer is for the first time.

5. While the directions of the Tribunal are quite clear, it is difficult to appreciate as to why the respondents are talking of the first cycle and the second cycle and messing up the issues. According to the directions of the Tribunal, they should have prepared one list upto 22.3.1990 including those who are likely to be promoted. In fact, nine people have been promoted vide order dated 29.3.1990 and their names also should have been included in the list. According to the directions, all that the

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respondents are required to do was to complete such a list and then only start the second cycle. If they had done so, the hardship caused to the three applicants viz., S/Shri Biswal, Bahera and Oram could have been avoided. In the case of Shri Oram, a second order has been issued within just three weeks of his return to the Regional Office on completing his tenure at Rourkela. May be, that in these three cases, if the three persons had actually been transferred in the first instance in 1984 itself, the transfer again in October 1989 could not have been a source of grievance; but then the transfers were not effected in 1984 for some reason or the other-administrative. The respondents, instead of preparing a list upto 22.3.1990 as directed had stuck doggedly to one cycle upto 17.11.1987 and have started operating on the so-called second cycle from 29.2.1988. This action of the respondents is clearly erroneous.

6. In the course of the hearing, the learned counsel for the applicants brought to our notice a decision of the Bangalore Bench of this Tribunal in a somewhat similar case viz., B.S.Vijaya Kumar Vs. R.P.F.C. [1990 (1) SLR 528]. In that case, the Bench had come down heavily upon the respondents and set-aside the transfer orders. But in that case the Bench viewed the actions of the respondents as malafide.

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7. We shall now examine whether the action of the respondents in issuing two orders dated 11.4.1990 by which all the five applicants are transferred is in order. Taking up the case of Mr. Batakrishna Jena and Smt. Aratirani Roy Chudamani, we find that the respondents had taken the correct course in ordering the transfer. Mr. Batakrishna Jena has alleged that since the respondents had not followed the orders of this Bench dated 22.3.1990, the order issued on 11.4.1990 in his case should also be struck-down. We do not agree with this contention. He is being transferred for the first time when his transfer had become overdue. In the case of Smt. Chudamani, she has also alleged that the respondents had not followed the directions of the Bench and in addition she had put-forth the plea that she had been suffering from illness and that she had undergone a minor operation. We have seen the medical certificates and find that what she had undergone was only a minor operation which should not be a ground for setting-aside or deferring the transfer order. Her transfer for the first time is also overdue. In this case also, we uphold the action of the respondents.

8. We shall now take-up the cases of S/Shri Khetra Mohan Biswal, Benudhar Bahera and Laxmidhar Oram. As stated earlier, the respondents have committed a mistake in that they had not prepared the list the way the Bench

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directed them to do. The question is whether the orders of the respondents can be struck-down for this error. We are faced with a series of decisions of the Full Bench and the Supreme Court upholding the right of the Departments to order transfers in administrative interests. We shall cite a few of them here:-

a) "Transfer of a Government servant may be due to exigencies of service or due to administrative reason. Courts cannot interfere in such matters. Shri Grover, learned counsel for the appellant however contends that the impugned order was in breach of the Government instructions with regard to transfers in the Health Department. If that be so, the authorities will look into the matter and redress the grievance of the appellant." [AIR 1981 (SC) 1577].

b) "Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on the ground of malafides." [1989 SCC (L&S) 481].

c) "Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee or public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter." (AIR 1989 SC 1433).

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d) "It would thus be seen that any transfer made in violation of transfer policy by itself would not be a ground for quashing the order of transfer as observed by the Supreme Court in "Varadha Rao's" case, instructions embodying the transfer policy are more in the nature of guidelines to the officers who are vested with the power to order transfers in the exigencies of administration than vesting any immunity from transfer in the Government servants or a right in the public servant. In fact, transfer policy enunciated by the Government or other authorities often allows a large amount of discretion in the officer in whom the authority to transfer is vested. However, as any transfer has to be made in public interest and in the exigencies of administration, if a complaint is made, that it is not ordered bonafide or is actuated by malafides or is made arbitrarily or in colourable exercise of power, such a complaint is open to scrutiny." (1988) 7 ATC 253 - Full Bench of C.A.T.

9. The tenor of the above decisions is that the administrative departments have the right to order transfers in public interest and this right has been upheld even if they depart from their own guidelines which are not mandatory. In the instant case, the Department has issued certain guidelines to mitigate the adverse effects of the transfers of low paid staff. But due to erroneous applications of the guidelines, the purpose of the guidelines has been defeated at-least in the case of three of the applicants. The respondents could have avoided hardship to these three applicants if they had correctly followed the directions of this Bench. We leave this matter to the respondents.

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If they have regard for their credibility, it is upto them to adhere as closely as possible to their own guidelines both in letter and spirit. We, however, do not find any malafide intentions or colourable exercise of power or violation of any statutory rule in the orders of transfer issued and are, therefore, not inclined to interfere.

10. Such being the position, all the five applications are dismissed with no order as to costs.

N.Sen Gupta
(N.SEN GUPTA)
Member (Judl.)

19.6.90



R.Balasubramanian
(R.BALASUBRAMANIAN)
Member (Admn.)

Dated: