

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.185 of 1990.

Date of decision : July 17,1990.

Laxmidhar Kar ... Applicant.
Versus
Union of India and others ... Respondents.
For the applicant M/s.Devanand Misra,
Deepak Misra,
R.N.Naik, A.Deo,
B.S.Tripathy, Advocates.
For the respondents ... Mr.Aswini Kumar Misra,
Sr. Standing Counsel (CAT).

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN
A N D
THE HON'BLE MR.N.SENGUPTA, 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 ? ^{No}
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

B.R.PATEL, VICE-CHAIRMAN, In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order of the Department transferring him from Tahalada Sub Office to K.Atapur Sub Office, in the district of Keonjhar. Copy of the impugned order is at Annexure-2.

2. The respondents have maintained in their counter

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that the transfer has been effected on administrative grounds and there being no other consideration it should not be interfered with.

3. We have heard learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents and perused the documents. Learned counsel for the applicant has strenuously urged that the applicant has been transferred as a punitive measure since he had earlier been transferred twice before completion of his tenure of four years in each station. According to learned counsel the applicant was transferred from Ghasipura to Keonjhar Court some time in June, 1986 and before completion of his tenure he was again transferred on 14.3.1988 from Keonjhar Court to Talapada Sub-Office. The present transfer order is dated 12.4.1990. These facts, according to learned counsel for the applicant, would go to show that frequent transfers have been effected by the Department to harass the applicant. Our attention has been drawn to paragraph 5 of the counter affidavit filed by the respondents. This paragraph reads as follows:

" 5. The applicant would have continued as SPM Talapada till completion of his tenure, but unfortunately there were serious complaints against him regarding taking illegal share from commission from Small Savings Authorised Agents and submission of fake medical claims. Though the allegations were not fully proved and no due action was taken against the official yet it was felt that the official had some hand in the matter and his continuance in the station was not considered proper in the interest of service and on administrative grounds. "

Mr. Misra, on the other hand, has submitted that there is no

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malafide on the part of the Department to transfer the applicant. Infact no such allegation has been made. According to Mr.Misra, the applicant was transferred from Keonjhar Court to Talapada on 14.3.1988 on the request of the applicant. The applicant put a representation for transfer from Keonjhar Court on 9.3.1988. Mr.Misra has further explained that as there were certain allegations of the applicant receivinn some commission from the Small Savings Authorised Agents, he was transferred from Talapada to K.Atapur not as a punitive measure but ' in the interest of service and on administrative grounds', as has been mentioned in paragraph 5 of the counter quoted above.

Learned counsel for the applicant has cited a judgment of the Hon'ble High Court of Orissa which has been reported in Vol.55(1983) CLT 132 ,particularly to the paragraphs 12 and 13 of the judgment. Learned counsel for the applicant has also said that this judgment has already been followed in subsequent cases, one of which was the subject matter of O.J.C.No.1903 of 1985 disposed of on 26.11.1985. We have no objection to accepting general proposition made in these two judgments but the cases have to be considered in the light of the peculiar facts and circumstances appearing in each case. Considering the facts of this case we are of the view that the transfer of the applicant vide Annexure-2 has been done on administrative ground in order to avoid further complication which in the ^{opinion} ~~interest~~ of the Department was likely to arise if the applicant would be retained any longer at Talapada and in view of administrative propriety the judgment of the Department should prevail.

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Unless there is any allegation of malafide and unnecessary harassment we do not like to interfere. We have not found any malafide in the present case and as such the application fails. There would be no order as to costs. However we would like to mention that it is open to the Department to consider the representation, if any made, by the applicant in the matter of his transfer.

[Signature]
.....17.7.90
Member (Judicial)

[Signature]
.....17.7.90
Vice-Chairman

Central Administrative Tribunal
Cuttack Bench, Cuttack.
July 17, 1990/Saranghi.

