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IN THE COURT OF CENTRAL ADMINISTRATIVE
TRIBUNAL: CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION No.419 of 1990.

Date of Decision:- 25th September, 1991.

Upendra Thakur Applicant.

Versus,

Union of India & Ors Respondents.

For the Applicant:

Mr.A.K.Bose,
P.K.Giri, Advocates.

For the Respondents:

Mr.P.N.Mohapatra,
Addl.Standing Counsel
(Central)

CORAM:

THE HON'BLE MR.N.SENGUPTA:MEMBER (J)

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 ?

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J u d g m e n t .

N. SENGUPTA: MEMBER (J) .

This is an application against an order of transfer dtd. 11.9.89 vide Annexure-2 to the application.

2. The grievance of the applicant, in brief, is that he was transferred from Rourkela to Berhampur, of course on promotion, in April, 1983 but he has many difficulties including the chronic illness of his wife, a T.B. Patient, and education of his children. He made a representation to the authorities and respondent No. 1, the competent authority, passed an order of transfer on 28.3.89 to Rourkela. But the District Engineer, Telecommunication, Rourkela did not allow him to join and subsequently on 11.9.89 an order transferring him and directing him to join at Jharsuguda was passed this order is the impugned one. The applicant's case is that the impugned order was passed without a proper application of mind to the circumstances in which he was placed and was arbitrary and malafide.

3. The respondents' case, as in their reply, would imply that for the transfer to Rourkela two persons were desirous, one was the present applicant the other, one Mr. Bhengra. As Bhengra was transferred earlier than the applicant and would be retiring within a short period, the grievance Adalat took a decision to transfer Bhengra to Rourkela and the applicant to Jharsuguda.

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This was done after the initial decision of the grievance Adalat of Telecommunication Circle to transfer the applicant to Sambalpur could not be implemented due to non-existence of the vacancy there and an order had to be passed transferring applicant to Rourkela. This order was later modified after considering the representation of ~~the~~ Bhengra.

4. Mr.A.K.Bose for the applicant has vehemently contended that the fact remains that the authorities after going through the representation of the applicant were satisfied about the genuineness of the grievance or difficulties expressed by him and that was the reason why they passed an order of transfer of the applicant to Rourkela. The applicant was suddenly and without being given any further opportunity of being heard was transferred to Jharsuguda therefore this action cannot but be arbitrary and unsupportable. On the other hand, Mr.P.N. Mohapatra, learned counsel for the respondents, has urged with equal vehemence that no doubt the applicant's grievances were heard and given a sympathetic consideration but the initial decision for transfer to Sambalpur was not capable of being implemented. Therefore, of necessity the order which was intended could not be passed and in its stead, an order of transfer to Rourkela had to be passed. Mr.Mohapatra has further contended that when the actual state of affairs was this, it cannot

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be said that infact the applicant was initially transferred to Rourkela and by his transfer to Jharsuguda he has been put to a disadvantage. Mr. Mohapatra has further contended that the department bears no ill-will or malice against the applicant, this would be manifest from the averments in the application itself where it has been stated that the authorities gave a sympathetic consideration and infact wanted to accede to the request of the applicant for a transfer to a place nearer to the one where his wife and children were residing, therefore it cannot by any stretch of argument be said that there has been any malafide on the part of the department. Mr. Bose wants to counter this argument of Mr. Mohapatra by saying that the fact that the decision was changed after once being taken, is indicative of subsequent development of improper motive. Mr. Bose has referred to some of the averments in the reply filed by the respondents and has contended that reasons sought to be assigned insupport of the change in the order of transfer of the applicant are weak and flimsy. With regard to this contention of Mr. Bose all that can be said is , that a distinction has to be made between absence of reason and weak reason, in the former case it may suggest malafide but not in the latter. The respondents have in clear terms admitted that infact Mr. Bhengra approached the authorities of grievance Adalat subsequent to

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passing of order vide Annexure-1 and that was the necessity or the cause for change of the order of transfer of the applicant to Rourkela. May be the authorities might have done better by giving an opportunity to the applicant when they heard Mr. Bhengra's grievance but law does not enjoin an obligation of hearing another while considering the case of transfer of one. A mere order of transfer does not create any vested right so as to call for giving an opportunity while changing the order of transfer. To repeat the oft quoted saying, a transfer is not a condition of service but it is an incident of service.

5. The limits of powers of courts and Tribunals in the matters of transfer have now come to be crystalised by the decision of the Hon'ble Supreme Court in two land-mark cases which are commonly known as H.N. Kirtanias case and Shilpi Bose's case. On reading two decision the principles that can be culled are that the courts and tribunals will get jurisdiction to interfere only when an order of transfer infringes any law including a statutory rule or is actuated ^{by} malice. As has been shown above, there can be no question of any malice on the part of the authorities in changing the order of transfer of the applicant from Rourkela to Jharsuguda. Mr. Bose wants to seek reliance on rule 38 of P & T Manual Vol-4 to say that the transfer order violates that rule accordingly,

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it is against the statutory rules. Rule 38 bears on transfer of a P & T employee on his own request but that really does not answer the question whether it debars the authorities from changing the order already passed at the request of an incumbent. For this reason, I would say that change in the order of transfer does not transgress rule 38 of P & T Manual.

6. Mr. Mohapatra was put the question how the applicant could be deprived of the T.A. and other admissible allowances on transfer when admittedly his representation was for a transfer to Rourkela. In this regard Mr. Mohapatra has drawn my attention to the averments in the reply that initially there was a decision in the grievance Adalat to transfer him to Sambalpur on his representation but that could not be implemented that is why Annexure-1 transferring him to Rourkela was passed on 23.8.89. Assuming that in the grievance Adalat such a decision was taken, that could not be sufficient to deprive the applicant of his T.A. and other allowances taking recourse of Rule 38 P & T Manual because it is only when a person is transferred to a particular place of his choice on his own representation then and then only he may not be allowed T.A. etc..

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7. In view of what has been stated above it is not possible on the part of this Tribunal to quash

Annexure-2 to the application but nevertheless as it is rather undisputed that the administration was satisfied about the genuineness of atleast some of the difficulties of the applicant, it is hoped that they would give due consideration to those difficulties and consider the representation that he has made or may make regarding the transfer. The case is accordingly disposed of. There is no order as to costs.

M. S. Hossain
25.9.91.
MEMBER (JUDICIAL)

Central Administrative Tribunal,
Cuttack Bench, Cuttack./Hossain/
25.9.91.