

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 203 OF 1991.

Date of decision: 24.12.1991.

Babaji Charan Acharya ..... Applicant

-Versus-

Union of India and others ..... Respondents.

For the Applicant ..... M/s Ganeswar Rath,  
P.K.Mohapatra,  
A.K.Patnaik,  
J.C. Sahu,  
Advocates.

For the Respondents ..... Mr. Ashok Mohanty,  
Sr.Standing Counsel,  
(Central).

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C O R A M :

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN  
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1. reporters of  
Whether/local papers may be allowed to  
see the judgment?Yes.
2. To be referred to the reporters or not? No.
3. Whether His Lordships wish to see the  
fair copy of the judgment?Yes.

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J U D G M E N T

K.P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the order contained in Annexure-2 transferring the Petitioner from Cuttack to Berhampur.

2.            Shortly stated, the petitioner Shri Babaji Charan Acharya is a Head clerk of Doordarshan Kendra situated at Cuttack and the Director General, Doordarshan vide his Office Order No. 84/3.II/91 dated 27th June, 1991 has transferred the Petitioner Shri Acharya from Cuttack to Berhampur which is under challenge and sought to be quashed.

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3. In their counter the Opposite Parties maintained that the impugned order of transfer has been passed in exigencies of service and in public interest and there being no illegality committed by such order of transfer, it should not be unsettled rather it should be sustained, Especially when there is no malafide in regard to such order of transfer.

4. I have heard Mr. Ganeswar Rath learned Counsel appearing for the Petitioner and Mr. Asok Mohanty learned Senior Standing Counsel for the Central Government at a considerable length. The latest pronouncement of Their Lordships of the Hon'ble Supreme Court laying down the grounds on which an order of transfer could be quashed has been reported in A.I.R. 1991 SC531 (Mrs. Shilpi Bose and others V. State of Bihar and Others) and 1989 SCC(L & S) 481 (Union of India and others Versus H.N. Kirtania). In both the cases Their Lordships were pleased to hold that an order of transfer could be quashed by a Court when there is violation of mandatory statutory rules or on the ground of malafide and it has been further more held that the guidelines laid down in the Administrative instructions have been violated, the affected party should approach the higher

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authorities instead of courts interfering<sup>with</sup> the matter which would ultimately create chaos in the administration. Keeping in view, the aforesaid dictum laid down by Their Lordships in both the cases, I would now proceed to consider the arguments advanced in this case. At the outset it may be stated that no mala fide or bias has been <sup>made</sup> ~~treated~~ by the Petitioner. The only submission made on behalf of the Petitioner is that one Shri H. Sethy, who has been serving for longer period in Doordarshan and had opted for transfer has not been considered but the Petitioner has been transferred who was stayed at Cuttack for a lesser period than the said Sethy. In their counter the Opposite Parties maintained that the said H. Sethy has been retained <sup>for</sup> ~~from~~ administrative reasons. If the ~~P~~etitioner feels aggrieved in this question, then following the view expressed by Their Lordships in the case of Mrs. Shilpi Bose, the Petitioner should approach his higher authorities for necessary orders <sup>to redress</sup> ~~of~~ his grievance. Besides, the above, nothing was submitted in regard to the mala fide or violation of mandatory statutory rules.

5. The next important question, in regard to which, Mr. Rath emphatically submitted is that the Director General of Doordarshan had no powers

to transfer the Petitioner as the Director General of All India Radio is the cadre controlling authority. In the counter, the Opposite Parties admit that the Director General of All India Radio is the cadre controlling authority. This **Being** the admitted position it now remains to be considered as to whether Director General, Doordarshan **is** the competent authority to transfer the Petitioner or the Director General of All India Radio is the authority to transfer the Petitioner. In this connection Mr. Ganeswar Rath learned Counsel for the Petitioner invited my attention to the counter submitted in the case of P.C. Panda Vs. J.P. Patnaik and others forming subject matter of Original Application No; 443 of 1990. At paragraph-9 of the counter it is stated that 'the Zonal authorities of All India Radio are competent authorities being the cadre controlling authority to pass appropriate orders of transfer and in this case effective consultation with the Doordarshan authorities has been done'. At the outset I would say that this Original Application bearing No. 443 of 1990 was disposed of as being infructuous. No finding on this issue has been given by this Bench. The distinguishing feature is that in the petition filed in the said Original Application, at paragraph 4.7, it had been averred that the Director General, Doordarshan vide letter No. 28/2/90-S.11 dated 5.10.1990 has issued the following instructions:

"(i) Transfer orders of officers upto the level of Senior Administrative Officers (Group B) in the Administrative Cadre within Doordarshan will be issued by Directorate General, Doordarshan without consulting All India Radio. Copies of such orders will be duly endorsed to All India Radio being the Cadre controlling Authority.

(ii) Transfer/Posting of Doordarshan Administrative Staff on promotion will be done by All India Radio in consultation with the Directorate General, Doordarshan. Copies of such orders, however, will not be marked to Doordarshan Kendras direct. Copies meant for Doordarshan Kendras will be sent to Doordarshan (Head-Quarters) which in turn will forward the same to Doordarshan Kendras."

6. Mr. Asok Mohanty learned Senior Standing Counsel for the Central Government relied upon the above quoted matters which also forms the subject matter of D.O. letter No. 22012/1/87-B(a) dated 27th January, 1980 addressed to the Additional Director General, Doordarshan, New Delhi by Shri Kashmiri Lal Under Secretary. From the above, instructions it is clear that the transfer orders of officers upto the level of Senior Administrative Officers (Group 'B) in the Administrative Cadre within Doordarshan will be issued by Directorate General, Doordarshan without consulting All India Radio. In my opinion this has no application to the present petitioner. As regards paragraph-ii, the administrative staff on promotion will be transferred

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by AIR in consultation with the Directorate General Doordarshan. From the tenor of these instructions it appears that the other members of the administrative staff were facing rotation transfer and legitimately be made by the Director General, Doordarshan. In such circumstances, I find no merit in the aforesaid contention of Mr. Ganeswar Rath, learned counsel for the petitioner.

7. Lastly it was submitted by Mr. Rath that the petitioner's wife is very seriously ill and if the petitioner is transferred to Berhampur leaving the wife at Cuttack (which is bound to occur), the living days of the wife of the petitioner is numbered and this would be equally a death blow for the petitioner. That apart, transfer in the mid academic session will considerably jeopardise the interest of the children of the petitioner. Therefore, Mr. Rath submitted that at least till the end of the academic session namely till July, 1992 the petitioner should be retained at Cuttack. Following the principles laid down by Their Lordships in the case of Mrs. Shilip Bose, this is a matter which should be sympathetically considered by the Director General, Doordarshan because the employer has a duty to look into the inconvenience and difficulties of the employee. On behalf of the petitioner it was submitted that the petitioner intends to make a representation to the Director,

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General ,Doordarshan for considering the prayer of the Petitioner in this regard. I have no objection if such a representation is made for sympathetic consideration of the Director General but it should be filed before the concerned Authority within three weeks from today and I hope and trust, it would be expeditiously disposed of and till its disposal the Petitioner should not be disturbed from the present post which he is holding. In case no representation is filed within the stipulated period, the transfer order should be carried out by the Petitioner.

8. Thus, the application is accordingly disposed of leaving the parties to bear their own cost.



Central Administrative Tribunal,  
Cuttack Bench, Cuttack/K. Mohanty.

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*[Signature]*  
24.12.91  
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VICE CHAIRMAN