

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUPTACK

ORIGINAL APPLICATION NO: 207 OF 1991

Date of decision: 23rd August, 1991

N.Redden and others

:Applicants

Versus

Union of India and others

:Respondents

For the applicants

: M/s.C.M.K.Murty,
S.K.Rath,
Advocates

For the Respondents

: Mr.L.Mohapatra, IAS,
Standing Counsel
(Rly.Administration)

C O R A M

HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN

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? Yes.

J U D G M E N T

K.P.ACHARYA, VICE CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioners prayed that a direction be given to Opposite Party No.2 not to implement the orders contained in Annexures-5 and 6 and also to issue a direction to the Opposite Parties to implement the direction of this Bench contained in Annexures 1 to 4 regarding the seniority position of the petitioners who are four in number.

2. Shortly stated, the case of the petitioners is that they were serving under the South Eastern Railway in different capacities stationed at Jatni-Khurda Road. Certain allegations were levelled against the petitioners for having misconducted themselves as a result of which all the four petitioners were removed from service. Applications were filed by the petitioners for quashing the order of removal which formed subject matter of Original Application Nos. 56, 57, 58 and 63 of 1989. This Bench by its order dated July, 27, 1990 quashed the order of punishment and directed reinstatement of the petitioners. After reinstatement the petitioners have been transferred from Khurda Road to Bilaspur Division for which they feel aggrieved and this application

has been filed with the aforesaid prayer.

3. In their counter the Opposite Parties maintained that the order of transfer has been passed in public interest and therefore, it should not be unsettled - rather it should be sustained. The case being devoid of merit is liable to be dismissed.

4. I have heard all the four petitioners individually and Mr. L.Mohapatra learned Standing Counsel (Railway Administration) on the merits of this case. Incidentally I may state that all the four petitioners individually submitted to the Court that they do not press their prayer for a direction to the Opposite Parties to implement the judgment of this Bench contained in Annexures-1 to 4 regarding the seniority position and the petitioners further submitted that they are confining themselves to their only prayer of quashing the transfer order and therefore the transfer being within the jurisdiction of a Single Judge, I have heard the parties on the merits of the case.

5. The petitioners submitted that the order of transfer is backed by mala fide and there is a clear violation of the rules to the effect that

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an employee cannot be transferred from one Division to the other. The provisions to the above effect which were placed before me are only administrative instructions and they are not statutory mandatory Rules. Law is well settled that the court can lay its hands for interference only when the transfer order is backed by mala fide or there is violation of mandatory statutory rules. The petitioners urged before me that out of mala fide motives they have been transferred to Bilaspur Division and in support of this contention the petitioners submitted that at first the concerned authorities ordered removal of petitioners from service dispensing with the enquiry and after such order of removal was set aside by this Bench, as a second string to the bow the concerned authority has transferred the petitioners to a long distant place in order to cause immense inconvenience to the petitioners and their family. At the first ~~flash~~ this argument appears to have ~~some~~ justification but on closer scrutiny, one would find that certain allegations of misconduct was levelled against the petitioners which ultimately resulted in their removal from service which was challenged before this Tribunal and ultimately quashed. I think there is substantial force in the contention of Mr. Mohapatra learned Standing Counsel that the disciplinary authority ~~was~~ entitled to his own views as the Bench was equally entitled to its views. This being a quasi judicial

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enquiry conducted by the disciplinary authority, it would be unjustifiable to jump into a conclusion that the concerned authority had a bias or mala fide to transfer the petitioners to Bilaspur Division. As regards violation of the mandatory statutory Rules Mr. Mohapatra submitted that according to the dictum laid down by Their Lordships of the Hon'ble Supreme Court the courts can interfere with transfer orders only when there has been a violation of the mandatory statutory rules and the court cannot interfere if there is a violation of certain administrative instructions in exigencies of service and in public interest. These are matters which lie within the competence of the Higher authorities of the Department who could be moved by the petitioner if they intend to do so and in support of this contention Mr. Mohapatra relied upon two judgments of Hon'ble Supreme Court, one reported in 1989 SCC (L&S) 481 (Union of India and others Vs. H.N. Kirtania) and the other case is reported in AIR 1991 SC 532 (Mrs. Shilpi Bose and others Vs. State of Bihar and others). In the case of H.N. Kirtania Their Lordships have been pleased to observe at paragraph-5 of the judgment as follows:-

" After hearing learned counsel for the parties we do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there

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was no valid justification for issuing injunction order against the Central Government. The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country. He has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. 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 ground of mala fides".

In the case of Mrs. Shilpi Bose and others (supra) Their Lordships at paragraph-4 of the judgment have been pleased to observe as follows:

" . . . In our opinion, the courts, should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest".

In view of the above quoted dictum laid down by Their Lordships I cannot but be slow to interfere
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with the impugned orders of transfer but that does not necessarily mean that the higher authorities of the petitioners are deprived of their jurisdiction to reconsider the matter on a representation being filed by the petitioners (as prayed for).

6. Thus the prayer for quashing the order of transfer stands dismissed and the application is accordingly disposed of leaving the parties to bear their own costs.



K. Mohanty
23-8-91

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VICE-CHAIRMAN

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