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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 233 of 1991.

Date of decision: October 31, 1991.

Arun Kumar Upadhyay Applicant.

Versus

State of Orissa and others ... Respondents.

For the applicant ... M/s. Devanand Misra,
Deepak Misra, R. N. Naik,
Anil Deo, B. S. Tripathy,
K. P. Bhoumik, & A. R. J. Sharma,
Advocates.

For the respondents ... Mr. K. C. Mohanty,
Government Advocate (State)

C O R A M:

THE 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 His Lordship wishes to see the fair copy of the judgment ? Yes.

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JUDGMENT

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the order passed by the competent authority as per Annexure-6 transferring and posting the applicant as Commandant, 5th Battalion, Orissa State Armed Police, Rangamaria with headquarters at Cuttack.

2. Shortly stated, the case of the applicant is that he is a member of the Indian Police Service and was directly recruited in the year 1976 having been allotted the Orissa cadre. The applicant is said to have served the Government of Orissa in various capacities, namely as Superintendent of Police, II, Criminal Investigation Department, as Asst. Inspector General of Police and as Superintendent o-f Police, Sadar, Cuttack and as Senior
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Staff Officer, Homeguards and also Superintendent of Police, Computer, Bhubaneswar. From the post of ~~Superintendent of Police, Computer, Bhubaneswar~~ ^{S.S.O.} ~~Home Guards, Cuttack~~, the applicant has been transferred and posted as Commandant, 5th Battalion, O.S.A.P., Rangamati with headquarters at Cuttack vide Annexure-6 which is under challenge and sought to be quashed.

3. In their counter, the respondents 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 quashed- rather it should be sustained.

4. I have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. K.C. Mohanty, learned Government Advocate (State) for the respondents.

5. Before I deal with the factual aspects of the case as above, and the pleadings of the parties and that of the facts mentioned in the written note of argument submitted on behalf of the applicant, it is worthwhile to state that the law relating to interference by a Court in regard to transfer of an Officer of the Government, ^{whether} from one place to the other ^{has been} settled in a plethora of judicial pronouncements ^{made} by the Hon'ble Supreme Court. The latest pronouncement has been reported in AIR 1991 SC 532 (Mrs. Shilpi Bose and others v. State of Bihar and others). In paragraph 4 of the judgment Their Lordships were pleased to observe as follows:

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" 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 be 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. The High Court overlooked these aspects in interfering with the transfer orders. "

In the case of Union of India and others versus H.N. Kirtania, reported in 1989 SCC (L & S) 481, Their Lordships of the Hon'ble Supreme Court were pleased to observe as follows:

" 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 malafides. "

The ratio decidendi of the above quoted observations of Their Lordships are as follows:

- i) Normally an order of transfer should not be interfered with; and
- ii) an order of transfer can be interfered with only when there is violation of mandatory statutory rules or on the ground of mala fide.

In the written note of argument submitted by learned counsel for the applicant it was clearly stated that the law having been settled that transfer cannot be challenged on any other ground except two grounds, namely, that there has been violation of mandatory statutory rule or malafide and admittedly there is no statutory rule governing the field of transfer but there are guidelines/instructions and circulars of the Government which are operative in the field of transfer. Hence, the applicant confines his challenge to malafide.

6. During the course of argument Mr. Deepak Misra, learned counsel for the applicant submitted that;

- (i) in between 1.8.1990 and 24.7.1991 the applicant has faced as many as six transfers;
- (ii) Due to such frequent transfers from one place to the other the applicant is deprived of exhibiting his performance and therefore, it would be difficult to obtain the views of his higher authorities regarding his performance to be recorded in his confidential character roll which would ultimately affect his promotion to higher posts especially promotion to the post of Deputy Inspector General of Police which is expected in near future; and
- (iii) No member of the Indian Police Service in the selection grade has ever been posted as Commandant, 5th Battalion, O.S.A.P. and normally the State Police Officers are transferred to that particular post.

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7. The posting of the applicant as Commandant, 5th Battalion, O.S.A.P. is at the insistence of Mr. P.C. Rath, the present Director General of Police, because Mr. Rath was ill disposed of towards the applicant and had borne a grudge against the applicant because when Shri P.C. Rath (Respondent No. 3) was functioning as Special Inspector C.G. General of Police, Fire Services and Home guards a conflict arose between the Respondent No. 3 and the applicant on account of allotment of vehicle. Even though there were staff cars and jeeps in the Office of the Special Inspector General of Police, Home Guards and Fire Services the applicant was denied staff car by the Respondent No. 3 although all his predecessors were supplied with staff cars. In addition to the above, the applicant had mentioned in a correspondence (vide Annexure-9) that even though Shri P.C. Rath had been posted ~~to the post~~ as Director General of Police yet he had not surrendered the jeep OIU 8033 and this had enraged the Respondent No. 3 and in order to feed fat to his grudge, Mr. Rath (Respondent No. 3) passed an order dt. 24.3.1991 withdrawing all vital functioning of the applicant without obtaining Government approval and observed that the applicant does not need a staff car because of the bulk of duties to be discharged by the applicant had been withdrawn and ultimately as a second string to his bow, the impugned order of transfer has been issued at the instance of Mr. P.C. Rath.

8. In the counter, all the above mentioned allegations levelled against Mr. P.C. Rath have been stoutly denied. Before I express any opinion, on the allegations in,

of malafide it is necessary to state the law on the subject. In a case reported in AIR 1974 SC 555 (E.P. Royappa v. State of Tamil Nadu and another), it is to be found that the petitioner in that case, who was the ex-Chief Secretary of the Government of Tamil Nadu had made certain allegations of malafide and oblique conduct against the Chief Minister. Their Lordships were pleased to observe as follows:

" Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of malafides are often very easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. Here the petitioner, who was himself once the Chief Secretary has flung a series of charges of oblique conduct against the Chief Minister. That is in itself a rather extraordinary and unusual occurrence and if these charges are true, they are bound to shake the confidence of the people in the political custodians of power in the State, and therefore the anxiety of the Court should be all the greater to insist on a high degree of proof. In this context it may be noted that top administrators are often required to do acts which affect others adversely but which are necessary for the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party particularly when the imputations are grave and they are made against the holder of an office which has high responsibility in the administration. Such is the judicial perspective in valuating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up these considerations are wholly irrelevant in judicial approach but because otherwise, functioning effectively would become difficult in a democracy. It is from this stand-point we must assess the merit of the allegations of malafides made by the petitioner against the second respondent. "

9. The above quoted observations of Their Lordships lays down that in cases where there are allegations of mala fide, the standard of proof is rigorous and it must be proved to the hilt. The Courts are not permitted to jump in to inferences without the facts being proved beyond shadow of doubt.

10. I would now proceed to examine different allegations quoted above in the light of observations made by Their Lordships in the above judgment.

The initial question that needs determination is as to whether the impugned order of transfer has been passed at the instance of Mr. P. C. Rath (Respondent No. 3). There is no iota of evidence on record to indicate that Mr. Rath had any role to play in the matter. I have carefully gone through the impugned order of transfer. The said order of transfer has been passed by the order of the Governor and a copy thereof in usual course of business has been endorsed to the Director General of Police. Had it been done at the instance of Mr. P. C. Rath, (Respondent No. 3), there would have been a reference to the communication made by Mr. P. C. Rath. Nothing appears to the above effect in the impugned order of transfer. Therefore, in my opinion, the allegation of the applicant that the impugned order of transfer has been passed at the instance of Mr. P. C. Rath (Respondent No. 3) is not only far-fetched but also baseless.

11. Next, coming to the question of withdrawal of the staff car, by no stretch of imagination it could be held that the staff car has been withdrawn at the instance

of Mr. P.C. Rath. On the contrary, the use of petrol and petroleum products and use of the staff car at the barest minimum and only for emergency purposes has been ordered by the Government at the instance of the Chief Minister. It is apparent from Annexure R-3/1 which is a letter written by Shri R.N. Das, I.A.S., Additional Chief Secretary. Therein emphasis has been laid as desired by the Chief Minister that certain restrictions have to be adopted in regard to use of staff cars on account of the hostilities in the Middle East and that maximum economy should be adopted in the use of petrol and petroleum products so much so that ^a staff car should be shared by different officers to take them from their residences to the Office and back. Accordingly, the applicant while functioning as A.I.G. of Police, rightly endorsed a copy of this letter to the D.I.G. of Police, P.M.T., Orissa for information and immediate compliance. It was further stated by the applicant, and rightly in obedience to the Government orders, that two staff cars from P.M.T. should pick up I.S.G./D.I.S.G./A.I.S.G. to take them to Office and bring them back and the extra vehicles such as gypsy/jeep provided to other ^{Police} Senior/Officers/ Range D.I.S.G./Ss.P. should be withdrawn. In view of such a situation, it cannot be said that it was at the instance of Mr. P.C. Rath (Respondent No. 3) that the vehicle was withdrawn. If he has done so, then it is in obedience to the desire of the Hon'ble Chief Minister. Therefore, the allegation of the applicant that Mr. P.C. Rath had withdrawn the staff car having borne a grudge against him is illfounded and baseless.

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My conclusions on this aspect stands fortified by the note given by Shri S.N.Mishra, I.P.S., I.G., Home Guards and D.G.P. Fire Service who is the successor of Mr.Rath, that there is nothing on record to support the statement of the applicant, in connection with the conflict between the applicant and Mr.P.C.Rath on account of allotment of vehicle. It is further more disclosed from the note given by Shri S.N.Mishra, D.G.P. Fire Service that he had ordered that the staff car used by the Senior Staff Officer (D.I.G.) Shri A.Ram, the then D.I.G. Home Guards should be shared by the applicant. The applicant did not avail of it. Therefore, it cannot be concluded that the applicant has been deprived of the use of staff car at the instance of Mr.P.C.Rath. I will repeat that all the allegations made against Mr.P.C.Rath are illfounded and imaginary. Conceding for the sake of argument that Mr.Rath was illdisposed towards the applicant, that has no bearing on this issue because it is the Government which has ordered transfer of the applicant, with which Mr.Rath has nothing to do and malafide has not been pleaded against anybody in the Government who are entrusted with the responsibility of suggesting the transfer of the applicant.

12. So far as the contention put forward on behalf of the applicant in regard to the facts stated against serial No. (ii) it is maintained by the State Government in its counter that the applicant during the period he has rendered service in different capacities, the concerned authority is competent to record his performance as the applicant has served in such capacity for more than

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three months and there would ^{be} no difficulty in assessing the performance for promotion to the next higher post. Therefore, I am of opinion that there exists no good ground for the applicant to have such an apprehension and that I am of further opinion that far fetched and unnecessary apprehension cannot persuade any Court to quash ~~an~~ order of transfer.

13. As regards the points urged against serial No. (iii) that no I.P.S. Officers of Senior Scale has ever been posted as Commandant, 5th Battalion, I had perused the contents of Annexure-14 in which one temporary post of Commandant, O.S.A.P. in 5th Battalion was created. Thereon the Government have specifically stated that the post will be filled up by promotion from the rank of Deputy Commandant of O.S.A.P. cadre or by I.P.S. Officers as decided by the Government. Therefore, once the Government decided to post an I.P.S. Officer as Commandant, O.S.A.P., 5th Battalion, there should not be any grievance on this account by the applicant. It completely lies with the discretion of the Government and no inference is warranted by a Court.

14. Last but not the least it was urged by Mr. Deepak Misra that the impugned order of transfer is against the norms laid down by the then Chief Secretary, Shri Ramakanta Mishra, I.A.S., vide his D.O. Letter No. 385/C.S. dated 18.6.1990 contained in Annexure-9. My attention was drawn to paragraph 2 of the said letter wherein it is stated that the Government are not in favour of frequent transfers of Officers. In paragraph 7

it is stated that in the present day atmosphere good transfers and postings become prestige issue. It is very much necessary that all postings and transfers should be fair and objective as far as possible failing which memorials follow and some also may rush to the Tribunals. Therefore, the Chief Secretary has laid down certain criteria/norms to be followed in passing the orders of transfer. Undoubtedly, they are executive instructions. In case the executive instructions are violated it is for the applicant to move his higher authorities, and courts cannot interfere in this regard as laid down by Their Lordships in the case of Mrs. Shilpi Bose and others (Supra). The applicant may move his higher authorities on this issue, if so advised.

15. On 30.10.1991 an additional written note of argument on behalf of the applicant was filed to the effect that the applicant being a member of the I.P.S. in the selection grade of I.P.S. in the scale of pay of Rs. 4500-5700/-, as such in a promotional rank than the Officers of Senior Scale of I.P.S. cannot be posted as Commandant even if it is assumed that the post of Commandant is equivalent to the senior Scale of I.P.S. and therefore, the posting of the applicant as Commandant is illegal. This point was never argued at the time when the case was heard on merits. Except a vague statement made in the original application regarding the rank, and salary of selection grade I.P.S. Officers and that of the Commandant, O.S.A.P. I/ Officers Senior Scale/Junior Administrative Grade/ Selection Grade no details have been mentioned relating to

the facts mentioned in the additional written note of argument thereby depriving the respondents from having their say in the matter. In the rejoinder filed on 28.10.1991 these detailed facts forming subject matter of the additional written note of argument did not find place. Therefore, without any opportunity having been given to the respondents to have their say in the matter I do not like to express any opinion on this aspect especially when this aspect was never argued at the time when the case was heard on merits and in such circumstances, learned Government Advocate (State) had no opportunity of meeting these points. Surprisingly, one would find that copy of this written note or argument has not been given to learned Government Advocate (State) and therefore in such circumstances I do not propose to take notice of the facts mentioned in the additional written note of argument.

16. Before I part with this case I may also say that one of the grievances of the applicant is that he has been deprived of his residential telephone connection which has been disconnected. In fairness to the applicant, the telephone connection at his residence should be made available. I feel that the Director General of Police or the Director General of Fire Service & Commandant General, Home Guards would be well advised to allow him this facility.

17. Subject to the observations made in the last paragraph of this judgment I find no merit in this case

which stands dismissed leaving the parties to bear their own costs. The stay order stands automatically vacated.



Keaswansingh
..... 31.10.91.
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
October 31, 1991/ Sanangi.