

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 239 of 1991.

Date of decision: August 23, 1991.

Versus

Union of India and others ... Respondents.

For the applicant ... Mr.G.A.R.Dora, Advocate.

For the respondents

1 and 2 ... Mr. Aswini Kumar Misra,
Sr. Standing Counsel (Central)

For the respondent No. 3

M/s. Devanand Misra,
Deepak Misra,
R. N. Naik, A. Deo,
B. S. Tripathy, P. Panda,
Advocates.

C O R R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

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

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Dr.Balakrishna Joshi ... Applicant.

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1 & 2 ... Mr.Aswini Kumar Misra,
Sr.Standing Counsel(CAT)

For the respondent No.3.. M/s.Devanand Misra,
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THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

JUDGMENT

K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act,1985, the applicant prays to quash the orders contained in Annexures 2 & 3 and to direct the Respondents 2 & 3 to allow the applicant to continue in the P & T Dispensary at Cuttack.

2. Shortly stated, the case of the applicant is that at present the applicant is posted as Chief Medical Officer P & T Dispensary,Cuttack vide Memo No.ST/99-3/84 dated 5.10.1989 issued by the Chief Post Master General,Orissa, Bhubaneswar. After the applicant worked as such, till 22.7.1991 the Ministry of Health and Family Welfare, Government of India conveyed the order of the President

transferring the applicant to Central Government Health Service, Pune contained in Annexure-2 and in pursuance thereto the Chief Post Master General vide memo No. ST/99-3/84 dated 1.8.1991 (Annexure-3) ordered that the applicant, Dr. Joshi ~~is~~ transferred and posted as Chief Medical Officer, Pune. In place of Dr. Joshi, Dr. L. N. Das, (Respondent No. 3) functioning as the Senior Medical Officer, P & T Dispensary Cuttack was provisionally promoted as Chief Medical Officer and posted in the same dispensary. On receipt of the order of transfer, the applicant filed this application to quash the orders contained in Annexures-2 & 3 and while admitting this case for hearing vide order dated 6.8.1991/learned my brother (Member (Judicial)) stayed operation of Annexures-2 & 3. A miscellaneous application was filed by Respondent No. 3 praying to take into consideration certain facts mentioned in the said application while passing the stay order. The said miscellaneous application is also pending.

3. In their counter, the respondents/maintained that the transfer order has been passed in public interest and there being no allegation of malafide etc. the case is devoid of merit and is liable to be dismissed.

4. I have heard Mr. G. A. R. Dora, learned counsel for the applicant and Mr. Aswini Kumar Misra, learned Senior Standing Counsel (CAT) for the respondents 1 and 2 and Mr. Deepak Misra, learned counsel for the respondent No. 3. From the contents of Miscellaneous application No. 258 of 1991 filed by Respondent No. 3 it is found that he had earlier filed an application under Section 19 of the Administrative Tribunal.

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Act, 1985 challenging the order passed by the competent authority denying promotion to him. This formed subject matter of O.A. 259 of 1983. This Bench disposed of the said case with a direction that promotion with retrospective effect should be given to Respondent No. 3 who was the applicant in the said case. Accordingly, Respondent No. 3 has been promoted and therefore, it is maintained by Respondent No. 3 that promotion and posting of Respondent No. 3 being in pursuance to a judgment passed by this Bench should not be interfered with. Incidentally, I may state that though this Bench in the aforesaid case had directed for promotion of Respondent No. 3 with retrospective effect but the Bench had not said anything about the posting as the Bench has no powers to make any observations on that account. Therefore, it is very much wrong on the part of Respondent No. 3 to maintain that his posting as Chief Medical Officer, P & T Dispensary, Cuttack was in pursuance to the judgment passed in the said original application. At the cost of repetition I may say that the case of the applicant in this application would be judged ^{on} ~~at~~ its own merits and according to the pronouncements of the Apex Court.

5. Before I deal with the questions of fact and the pronouncement of the Apex Court it is worthwhile to state that law is well settled that an order transferring an employee from one station to the other can be quashed by a Court only when the impugned order of transfer is backed by malafide and when it is found that there has been a violation of mandatory statutory Rules. This well settled position of law has been laid down ⁱⁿ some of the judgments passed by

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the Hon'ble Supreme Court. In the case of Union of India and others v. H.N.Kirtania reported in 1989 SCC (L & S) 481 Their Lordships at paragraph 5 of the judgment were pleased to observe 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 was no valid justification for issuing injunction order against the Central Government. The respondent being a Central Government employee held a transferable post and ~~as~~ 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. "

6. The latest pronouncement of the Hon'ble Supreme Court is reported in AIR 1991 SC 532 (Mrs. Shilpi Bose and others v. State of Bihar and others). In this case at paragraph 4 of the ~~reported~~ judgment Their Lordships were 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 malafide. 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.

7. From the above quoted observations of Their Lordships the ratio decidendi is that transfer orders should not be interfered with ^{by} Courts unless backed by malafide or is in violation of statutory mandatory rules. In the present case, there is neither any allegation of malafide nor violation of any mandatory statutory rules. The only point ^{on} which Mr. Dora emphatically submitted is that vide letter No. 8/17/85-Medical dated 29.9.1989 contained in Annexure-A/4 issued by the Ministry of Communications, it is stated that the Chief Medical Officer and the Medical Officers (Senior Class I and Junior Class I) working in P & T Dispensaries will be normally subject to station tenure of 4 years which may be extended upto 6 years in individual cases in the public interest and it was further submitted by Mr. Dora that in view of guidelines laid down in letter No. 69/4/79-SPB-I dated 12.11.1991 the officer gaining promotion normally should be transferred to a different unit at a different station and therefore, according to these instructions the present applicant should not have been disturbed - rather Respondent No. 3 should have been transferred from Cuttack. These instructions are admittedly administrative instructions without having any statutory force. Therefore, conceding for the sake of argument that there has been any violation of the Rules, though it may at best amount to violation of

administrative instructions and not violation of statutory mandatory rules. In such circumstances, the dictum laid down by Their Lordships in the above mentioned cases stand as a bar for interference. Even though I have held that in the absence of allegation of malafide and in the absence of violation of any mandatory statutory rules I do not feel inclined to interfere with the impugned orders of transfer, and yet here is a case in which it was strenuously urged by Mr.Dora that ~~cancelation of~~ applicant's transfer to Pune should be sympathetically viewed. Mr.Dora relied upon Annexure-A/5 which is a certificate granted by Dr.P.Tejeswar Rao, Professor and Head of the Department, Orthopaedic Surgery of S.C.B. Medical College, Cuttack. Therein Dr.Tejeswar Rao has stated that the applicant's son Shri Vyasadev Joshi is a patient of sickle cell Thalasaemia requiring frequent Blood transfusions for his survival. As a complication of the disease he is suffering from Chronic Osteomyelitis of long bones and stiffness of several joints. Dr.Rao has further advised that he should stay at a place where facilities to treat the crises promptly including transfusion of blood are available. The fact that the son of the applicant is suffering from such a dangerous disease is also borne out from the certificate ^{Want} by the treating physician of the All India Institute of Medical Sciences, New Delhi, Christian Medical College, Vellore, and Post-Graduate Institute of Medical Education and Research at Chandigarh. Hence, it was submitted by Mr. Dora that at least for the cause of his son, the applicant should be allowed to stay at Cuttack because the applicant

would not get any relation at Bombay to immediately donate blood for transfusion and it would be very much risky to have blood immediately at Bombay from the Blood Bank and due to delay in procuring the blood from the Blood Bank disasters may be caused to the life of the son of the applicant.

8. On the other hand, it was urged by learned Senior Standing Counsel (CAT) for the respondents 1 and 2 and Mr. Deepak Misra, learned counsel for Respondent No. 3 that the applicant could avail equal opportunity, if not better opportunity for his son at Bombay. Certainly there may be better equipped hospitals at Bombay, but the applicant may not have the opportunity of getting ^{immediately} services of known reputed doctors as at Cuttack and there may be difficulty in readily obtaining blood for transfusion. In my opinion, this is a matter which needs serious consideration by all concerned. In view of the dictum laid down by the Hon'ble Supreme Court in the case of Mrs. Shilpi Bose and others v. ^{through} Union of India and others, I do not find any reason to interfere with the discretion of the competent authority recommend to but I would ~~recommend~~ the appropriate authority to reconsider the matter in the light of the certificates granted to the son of the applicant by the treating physicians and pass orders as it deems fit and proper. Therefore, I have no objection if the applicant (as prayed for) makes a representation to the appropriate authority for reconsideration of the entire matter in the light of the facts stated above and if so advised, the applicant files a representation, he should do so, within 15 days from today and I hope and trust the appropriate authority

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would pass necessary orders within 45 days therefrom. The applicant shall not be disturbed from the post of Chief Medical Officer till the final disposal of the representation of the applicant and in case any representation is not filed within 15 days from today, the transfer order contained in Annexures-2 & 3 would be given effect to.

9. Before I part with this case, ^{I must state that} it was urged by Mr. Deepak Misra, learned counsel for the Respondent No. 3 that soon after receipt of the order of transfer and posting, Respondent No. 3 has assumed charge of the post of Chief Medical Officer and therefore the case itself has become inf~~fect~~uctuous. In order to repudiate this contention, Mr. Dora relied upon Annexure-A/8 which contains certain endorsements in the Order Book. Against serial No. 930 dated 7.8.1991 the applicant states that on the said ^{day} he had joined the post of Chief Medical Officer on expiry of his leave for 5 days and the transfer order has been stayed by the Central Administrative Tribunal, Cuttack Bench. Against serial No. 931 dated 7.8.1991 it is mentioned that since Dr. A. Mohapatra S.M.O. has been allowed to remain absent on 7.8.91 from 10 a.m. to 11 a.m., Dr. L.N. Das (meaning Respondent No. 3) will manage the duty of Dr. Mohapatra in addition to his own duties. Thereafter at Serial No. 932 dated 7.8.1991 Dr. L.N. Das (Respondent No. 3) states that he has already assumed charge on 6.8.1991 at 8 a.m. Ordinarily one would expect that this endorsement would have appeared in between serial No. 929 dt. 5.8.1991 and serial No. 930 dated 7.8.1991. Learned counsel appearing for the respondent No. 3 could not give any satisfactory explanation as to why the fact of assuming

charge was mentioned against serial No. 932. Therefore, I am not prepared to accept the contention of Respondent No. 3 that he had assumed charge on 6.8.1991 before the stay order was received. In my opinion, this is an after-thought, which cannot be acted upon.

10. Thus, this application is accordingly disposed of subject to the observations made in paragraph 8 of this judgment. Parties to bear their own costs.

Central Administrative Tribunal,
Cuttack Bench, Cuttack
August 23, 1991/Sarangi



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..... 23/8/91
Vice-Chairman