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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK.

Original Application No.265 of 1991.

Date of decision: September 27, 1991.

Gobinda Prasad Rath ... Applicant.

Versus

Union of India and others... Respondents.

For the applicant ... M/s. Ashok Kr. Mohapatra,
S. Sahu, M. K. Mishra, Advocates

For the respondents ... Mr. R. N. Mohapatra,
Addl. Standing Counsel (Central)

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 wish 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 contained in Annexure e-3 dated 20.8.1991 transferring the applicant from Cuttack to Bhubaneswar.

2. Shortly stated, the case of the applicant is that he was promoted as an Accounts Officer by order dated 25.3.1991. Since 29.5.1991 the applicant is functioning as Accounts Officer in the Office of the Telecommunication District Manager, Cuttack and the applicant has been transferred to the Circle Office at Bhubaneswar for which he feels aggrieved and hence this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the order of transfer is in exigencies of service and there being no merit in the application, it should be in limine dismissed.

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4. I have heard Mr. Ashok Kr. Mohapatra, learned counsel for the applicant and Mr. P. N. Mohapatra, learned Additional Standing Counsel (Central) for the respondents at ~~length~~ a considerable length.

Before I deal with the factual aspects of the case, it is worth while to note the two judgments of the Hon'ble Supreme Court, one of which is reported in 1989 SCC (L & S) 481 (Union of India and others v. H. N. Kirtania). At paragraph 5 of the judgment Their Lordships 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 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. "

5. 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 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

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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."

The ratio decided in both the judgments is as follows:

A transfer order is to be struck down only on the ground of :

(i) malafide; and

(ii) violation of statutory mandatory rules.

6. Now, coming to the questions of fact, so far as the present case is concerned, Mr. Ashok Kr. Mohapatra, learned counsel for the applicant strenuously urged before me that malafide on the part of the competent authority is apparent from the records of this case. It was submitted by Mr. Ashok Kr. Mohapatra that in the course of a year and half the applicant has been transferred from Bolangir to Bhubaneswar and then from Bhubaneswar to Cuttack and surprisingly the concerned authority not having taken into consideration the immense inconvenience that is faced by the applicant and his children, the competent authority has again transferred the applicant from Cuttack to Bhubaneswar which would considerably tell upon the education of the children of the applicant and cause immense inconvenience to the other members of the family. According to Mr. A. K. Mohapatra, there could not be a better case of malafide than the present one. It was further submitted

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that the transfer is against the norms laid down in Rule 47-A of the P & T Manual, and therefore, it can be safely concluded that the order of transfer is in violation of statutory mandatory rules.

7. So far as the first aspect is concerned, Mr. P. N. Mohapatra, learned Additional Standing Counsel (Central) invited my attention to Annexures R/3, R/4 and R/6 and it would be found therefrom that the transfer of the applicant from Bolangir to Bhubaneswar and then from Bhubaneswar to Cuttack was based on the representation made by the applicant praying for his transfer to the above mentioned stations. Request of the applicant was acceded to. [During the course of argument Mr. Ashok Kumar Mohapatra submitted with vehemence that the applicant had not made any representation for his transfer and this submission was made on instructions and after perusal of Annexures R/3, R/4 and R/6, I am of opinion that incorrect (though not false) instructions have been given to the learned counsel by the applicant. Least being aware of the serious consequences that would follow against the applicant for making ~~is~~ wrong and incorrect statements made before Court through his counsel. this part of the conduct of the applicant is strongly ~~depricable~~ ^{depricable}.] However, on a perusal of the above mentioned documents I find that there is substantial force in the contention of Mr. P. N. Mohapatra, learned Additional Standing Counsel (Central) that the transfer of the applicant from Bolangir to Bhubaneswar and then from Bhubaneswar to Cuttack having been ordered on the representation filed by the applicant, the question of malafide does not arise. Rather, I am of opinion that the departmental authorities have been very kind to the applicant

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have transferred him to a place of his choice. I further find that the aforesaid contentions relating to malafide put forward by the learned counsel for the applicant deserves no merit and hence rejected.

8. As regards the contention put forward by learned counsel regarding violation of Rule 47-A of the P & T Manual and other instructions issued by the Central Government from time to time, Without least hesitation in my mind I would say that the P & T Manual has no statutory force like that of circulars issued by the Railway Board. I had called upon Mr. Mohapatra to place a single decision of any Court holding that P & T Manual has the statutory force. No such decision could be placed and that I do not think that there can be any dispute that the P & T Manual has any statutory force and they are merely in the shape of administrative instructions, violation of which could be ventilated before the higher authorities as held by the Hon'ble Supreme Court in the case of Mrs. Shilpi Bose and others (supra).

9. Applying the principles laid down by the Hon'ble Supreme Court in the case of Mrs. Shilpi Bose and others to the facts of the present case I find no merit in this application which stands dismissed leaving the parties to bear their own costs. In the circumstances of the case stated above, the interim order passed by this Bench on 21.8.1991 stands automatically vacated.

10. Before I part with this case I must say that an application was filed on behalf of the respondents forming subject matter of M.A.294 of 1991 in which a prayer was made on behalf of the respondents in O.A.265 of 1991 to vacate the stay order. In view of the fact that O.A.265 of 1991 stands

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dismissed, and the stay order having been automatically vacated no further orders need be passed in the said Miscellaneous application which is disposed of accordingly.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
September 27, 1991/Sarangi.

..... 27. 9. 91
Vice-Chairman