

3

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 388 of 1991

Date of Decision 28. 11. 1991

Bhutaram Majhi Applicant

Versus

Union of India & others Applicant

For the applicant M/s.B.Baug &
D.K.Sahoo,
Advocates

For the respondents M/s.Ashok Mohanty,
Standing Counsel (Central)

...

C O R A M

HON'BLE MR.K.P.ACHARYA, VICE-CHAIRMAN

...

1. Whether the reporters of local newspapers may be allowed to see the judgment or not ? Yes
2. To be referred to reporters or not ? *Yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

...

JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order passed by the competent authority contained in Annexure-4 dated 11.5.1991 transferring the petitioner from Balasore to Gangtok.

2. Shortly stated, the case of the petitioner is that he is a Lower Division Clerk working in the office of the Garrison Engineer(I) OP No. 4 at Chandipur in the district of Balasore. The petitioner has been working as such since 1980 and it is for the first time that he has been transferred vide Annexure-4. Hence this application with the aforesaid prayer.

3. In their counter the Opposite parties maintained that the transfer order is for administrative convenience, exigency of service and the interest of the state and therefore the impugned order should not be set aside/ rather it should be sustained.

4. I have heard Mr.Baug, learned counsel for the petitioner and Mr.Ashok Mohanty, learned Standing Counsel for the Central Government at a considerable length.

5. While assailing the impugned order-Annexure-4 it was submitted by Mr.Baug that admittedly the petitioner being a member of the scheduled tribe has been vested with certain privileges by the Parliamentary Committee which has laid down that members of the scheduled tribe should not be transferred, and in addition to the same it was submitted by Mr. Baug that appointment of the petitioner being against a reservation quota

on regional basis, the impugned order is illegal and inoperative. Lastly it was contended that the impugned order of transfer has been passed in clear violation of the administrative instructions contained in annexures A & B to the counter.

6. On the other hand it was strenuously urged by Mr. Ashok Mohanty, learned Standing Counsel that the petitioner has joined service with eyes open having an all India transfer liability which has been specifically mentioned in the order of appointment and which has been accepted by the petitioner. It was further contended by Mr. Mohanty that in view of the law laid down by Their Lordships^{of} in the Supreme Court^{by} in the case of Mr. Silpi Bose and others vrs. Union of India & others reported in AIR 1991 Supreme Court 532, this Court should not interfere with the impugned order of transfer.

7. I have given my anxious consideration to the arguments advanced by Mr. Mohanty and before I express any opinion, it is necessary to quote the observations of Their Lordships in the case of Union of India vrs. H.N. Kirtania reported in 1989 Supreme Court cases (L&S) 481. Their Lordships were pleased to observe as follows: "

"The respondent being a Central Government Employee holds a transfer able 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.

for

Transferring 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, mandatory rules or on ground of malafides".

In the case of Mrs. Silpi Bose & others (SUPRA) at paragraph-4 Their Lordships were pleased to observe as follows :

"In our opinion, the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the orders are made in violation of any mandatory, statutory rules or on the ground of malafide. The 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 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, unless 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 complications in the administration which would not be conducive to public interest".

8. From the above quoted observations of Their Lordships the ratio decidendi is as follows :

1. Normally a transfer order should not be ~~interfered~~ with;
2. It can only be ~~interfered~~ with when there is malafide or bias ^{proved} approved by the aggrieved party or where there is a violation of mandatory, statutory rules.

9. At the outset I may state that neither in the pleadings nor during the course of argument anything has been stated or was argued on the question of malafide. Neither

in the pleadings nor during the course of arguments anything has been stated regarding violation of the mandatory, statutory rules. The only point on which a strenuous argument was advanced by Mr. Baug is that the petitioner being a member of the reserved community has no liability to be transferred ^{and} under the order of transfer ~~which~~ is in violation of the instructions contained in ^{by} Annexures A & B. In support of these contentions Mr. Baug relied on the Office Memorandum bearing No. AB-14017/27/89-ST.(RR), dated 20th June, 1989 issued by the Department of Personnel & Training which runs thus :

"The undersigned is directed to say that a Committee of Members of Parliament, which examined matters relating to representation of Scheduled Castes and Scheduled Tribes in Government Services has recommended that the tribals should, as far as possible be posted near their native place. The recommendation has been examined carefully. It may not be possible or desirable to laid down that holders (belonging to SC/ST) of Group A and Group B posts who have all India transfer liability should be posted near their native places. It has however been decided that in the case of holders of Group C and Group D posts who have been recruited on regional basis and would belong to Scheduled Tribes may be given posting as far as possible, subject to the administrative constraints near their native places within the region".

In my opinion this has no application to the present petitioner because nothing has been said therein regarding Group C employees who have an all India transfer liability, as in the case of all India transfer liability

saddled over Group A & B. That apart the words 'as far as possible' gives sufficient discretion to the competent authority to take his decision according to the facts and circumstances of a particular case keeping in view the exigency of service and interest of the state. Next it was urged by Mr. Baug that the transfer order is in violation of the instructions contained in Annexures A & B to the counter. Annexure-A is dated 7th September, 1991. The impugned order of transfer has been passed on 11.5.1991 much before issuance of Annexure-A and therefore it has no application to the present petitioner. So far as Annexure-B is concerned it is dated 25.2.1991. Mr. Baug relied upon clause-C of paragraph-4 of the said circular, wherein it is stated that Clerks, Storekeepers and other categories of staff working in sensitive sections will be transferred to another nonsensitive section within the division or another division or CF/CWE-Headquarters as far as possible within the station. Apart from that I would ~~say from~~^{the} language of the circular it would be found that the word 'as far as possible' has been mentioned and that is very significant. That apart I am unable to accept the ~~argument~~^{argument} of Mr. Baug so far as annexure-B is concerned because ~~the~~^{the} submission made on the basis of the instructions contained in Annexure-B does not find place in the pleadings of the petitioner. It would be unjust and improper to take notice of this argument without giving an opportunity to the opposite parties

EN

to meet this point and since the above mentioned facts do not find place in the pleadings of the petitioner, the opposite parties had no opportunity to meet the same and therefore this part of the argument advanced by Mr. Baug is bound to be overlooked and it is hereby ruled out from consideration for the reasons stated above.

10. Assuming for the sake of argument that these instructions could be taken notice of, I am of opinion that I am not competent to give any redress on this account to the petitioner because in the case of Mrs. Shilip Bose & others (SUPRA) Their Lordships have held that in case affected party feels aggrieved for violation of any administrative instructions, he should approach his higher authority and therefore in the present case it is the higher authority of the petitioner who should devote his attention to this aspect and if moved, should pass necessary orders according to law.

11. Last but not the least I may say that Mr. Mohanty was perfectly justified in stating that the petitioner very well knew that he is joining a service ~~a service~~ which has an all India transfer liability. Following the principles laid down by Their Lordships of the Supreme Court, I would say that the petitioner cannot choose his place of posting. However, as a last straw on the camels' back Mr. Baug submitted that liberty be given to the petitioner to once again move the higher authority for considering the case of the petitioner. I have no objection. The petitioner is at liberty to be moved the higher authority

BN

who may consider the case of the petitioner and pass orders accordingly. ^{to have} Mr. Baug further submitted that a post is lying vacant in the same division ~~at~~ Balasore. The petitioner should be posted against the same vacant post. I cannot say anything in this regard. It is for the higher authority who may also consider this aspect. But so far as judicial determination is concerned, I find no merit in this application which stands dismissed leaving the parties to bear their respective cost.



B.K. Sahoo
28/11/91
.....
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
November, 28, 1991// B.K.Sahoo