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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 3 of 1991.

Date of decision: April 20 1992.

All India Telecom Employees
Union, Bhubaneswar and others ...

Applicants.

Versus

Union of India and others ...

Respondents.

For the applicants ...

M/s. B. S. Misra,
N. K. Behera,
G. P. Misra, Advocates.

For the respondents 1 and 2

Mr. P. N. Mohapatra,
Addl. Standing Counsel (Central)

For the respondents 3 to 7 ... Mr. G. A. R. Dora, Advocate.

...

C O R A M:

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

AND

THE HONOURABLE MR. C. S. PADEY, MEMBER (ADMINISTRATIVE)

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 Their Lordships wish to see the fair copy of the judgment ? Yes.

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1 and 2 Addl. Standing Counsel (Central)

For the respondents 31 to 7.. Mr.G.A.R.Dora, Advocate.

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A N D

THE HONOURABLE MR. C. S. PANDEY, MEMBER (ADMINISTRATIVE)

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JUDGMENT

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicants pray to quash the order passed by the competent authority dated 27.12.1990 contained in Annexure-3 transferring Respondents 3 to 6 and also Respondent No.7 by virtue of an order separately passed.

2. Applicant No.1 is All India Telecom Employees Union Class III, Orissa Circle, Bhubaneswar represented by its Secretary, Shri B.B.Rout. APplicant No.2 is All India Telecom Employees Union Class III Divisional Branch, Berhampur represented through Divisional Secretary, Shri Simadri Behera and applicant No.3 is Simadri Behera himself.

Vide Annexure-3, 4 persons were transferred from Koraput, Bidyadhar Pradhan was transferred from Koraput to Phulbani and K. Sunakar Acharya, Harihar Prasad Mohapatra and P. K. Praharaj were transferred from Koraput to Berhampur. Vide Annexure-R/2 dated 19.12.1990 K. K. Panigrahi, Telephone Operator posted at Koraput was transferred to Berhampur. All these transfers are sought to be challenged and prayed to be quashed.

3. In their counter, the respondents maintained that these transfers of the incumbents contained in Annexure-3 have been made on their request and the transfer of K. K. Panigrahi was made on temporary basis as his present tenure as Assistant Secretary of the Union still exists and this transfer has been made according to the instructions contained in DOT No. 71-14/82-SPB 1 dated 22.5.1982. Therefore according to the respondents the orders of transfer should not be unsettled - rather it should be sustained.

4. We have heard Mr. B. S. Misra, learned counsel for the applicants, Mr. P. N. Mohapatra, learned Additional Standing Counsel (Central) for the respondents 1 and 2 and Mr. G. A. R. Dora, learned counsel for the respondents 3 to 7.

5. At the outset we must point out that this case suffers from an incurable irregularity/ illegality. The Statute makes a specific provision that application filed jointly by more than one person cannot be entertained unless a specific permission has been granted by the Court. In the present case, no such application with any such prayer has been made and therefore the Court at no point of time has permitted the applicants to jointly file the

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application. Hence, we are of view that on this ground alone the application is liable to be dismissed.

6. Now, coming to the merits of the case, it was urged by Mr.P.N.Mohapatra, learned Additional Standing Counsel (Central) and adopted by Mr.Dora that the applicants 1 and 2 have no *locus standi* to challenge the order of transfer passed by the administrative authority. The entire discretion vests with the competent administrative authority as to who should hold which post and the discretion of the competent administrative authority cannot be fettered by employees Union. In reply thereto Mr.B.S.Misra submitted that once there is a violation of the provisions contained in Rule 38 of the P & T. Manual the Union has a right to protect the interest of other members of the Union whose seniority would be affected. It was furthermore submitted by Mr.B.S. Misra that transfer on own request is not allowed and in case it becomes operative it cannot invade the seniority of other incumbents who had applied earlier for transfer on own request.

7. We have given our anxious consideration to the arguments advanced at the Bar. In the case of Mrs. Shilpi Bose and others vrs. State of Bihar and others reported in AIR 1991 SC 532 Their Lordships have been pleased to lay down that Courts should not ordinarily interfere in cases of transfer of Government servants unless there is violation of statutory mandatory rules or in cases of malafide. In the present case, admittedly there is no violation of any mandatory statutory rules. We had called upon Mr.B.S.Misra to point out as to whether the applicants have stated any

malafide. Mr. Misra submitted and drew our attention to paragraph 9 of the original application, ^{where} it is stated that while review application against the judgment passed in O.A.84 of 1989 was pending determination by this Court, the competent authority, clandestinely moved and tried to circumvent the orders of this Tribunal by transferring Respondents 3 to 7 from Koraput Division to Berhampur in order to subterfuse the orders of this Tribunal. We cannot conceive as to how there was a clandestine move on the part of the respondents in issuing the transfer order transferring Respondents 3 to 7. That apart, conceding for the sake of argument that the competent authority passed order while review application was pending determination, we also cannot conceive as to how there was malafide on the part of the competent authority. In their judicial pronouncement the Apex Court has held that question of malafide must be specifically pleaded and it must be proved to the hilt. In the present case, there is only a bare averment in paragraph 12 of the petition that the transfer order was passed on malafide basis. We repeat that no specific instances have been given anywhere in the pleadings except the matters stated above. A general observation or general averment pleading malafide will not be sufficient for the present purpose. Therefore, there is no escape from the conclusion that ~~in~~ the present case there is no case of malafide or violation of statutory mandatory rules. Hence, the dictum laid down by Their Lordships in the case of Mrs. Shilpi Bose and others (supra) applies mutatis mutandis to the facts of the present case debarring ^u from interfering in the matter.

8. Mr. Misra, learned counsel for the applicant submitted that transfer on own request is not permissible and in case it is permissible it should not affect the seniority of others. In the case of Mrs. Shilpi Bose the Hon'ble High Court of Patna quashed the order of transfer on the ground that transfer on own request should not have been allowed. But contrary view was expressed by the Hon'ble Supreme Court that discretion vests with the competent authority to order transfer on own request. We are bound by the views of the Hon'ble Supreme Court.

9. Mr. Misra then submitted that there would be violation of the provisions contained in Rule 38 of the P & T Manual by virtue of such transfer affecting seniority position. Admittedly, P & T Manual does not have any statutory force. It contains administrative instructions. In the case of Mrs. Shilpi Bose the Supreme Court has further held that in case there is any violation of administrative instructions, the affected party should approach the higher authority instead of seeking interference by the Court. In case seniority is affected as contended by Mr. Misra, we give opportunity to the persons aggrieved to approach the higher authorities and place their grievance before the higher authorities who would dispose of the representations of the persons aggrieved according to the rules but we would not like to express any opinion on this aspect.

10. It was lastly contended by Mr. Mohapatra and adopted by Mr. Dora that the Union has no right to invoke the jurisdiction of this Bench when the so called affected parties have not felt aggrieved and have not come

up before this Court. Mr. Misra submitted that though others have not come up before this Court yet Simadri Behera who is one of the affected persons is Applicant No. 3. Mr. Dora invited our attention to the counter filed by Respondents 1 and 2. In paragraph 7 of the counter it is stated as follows:

"The claim of the petitioners will be considered only when they apply through proper channel. The T.D.E., Koraput has made it clear over phone that no such request is received from Sri Behera and Sri Mishra."

From this averment we are bound to presume that neither Shri Behera nor Shri Mishra have filed any representation for their transfer. Mr. Misra learned counsel for the applicants vehemently submitted before us that they have filed such representation and the above quoted averment is nothing but wrong and false. We had called upon Mr. Misra to file a copy of the representation in order to counteract the averments finding place in the counter. Mr. Misra submitted that copy of the representation has not been retained by the applicants and therefore, it could not be filed. We are unable to conceive a situation that a Government service while filing representation ~~will~~ ^{will} not maintain a copy of the same and therefore we accept the statement made in the counter that no such representation for transfer on own request has been filed by Mr. Misra.

11. In view of the irregularities/ illegalities pointed out in the opening paragraph of this judgment and in view

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of the reasons given above, we find no merits in this application which stands dismissed leaving the parties to bear their own costs.

Chaudhury
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MEMBER (ADMINISTRATIVE)

20/4/92

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Kumar Das
20.4.92

.....
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
April 20, 1992/Sarangi.

