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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 85 OF 1991.

Date of decision: 31st March, 1992

Bhaja Swain Applicant

-Versus-

Union of India and others Respondents

For the applicant M/s. A.B.Misra,
C.R.Misra,
B.Nayak,
D.Behura,
Advocates.

For the respondents Mr. Ganeswar Rath,
Addl.Standing Counsel
(Central)

CORAM:

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 ? No
3. Whether His Lordship wish to see the fair copy of the judgment? Yes.

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For the applicant

: M/s. A. B. Misra, C. R. Misra,
B. Nayak and D. Behura,
Advocates.

For the respondents

: Mr. Ganeswar Rath, Addl.
St. Counsel (Central)

CORAM:

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

J U D G M E N T

K. P. ACHARYA, V. C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the order of transfer contained in Annexure-2 dated 8th December, 1990 (vide Office Order No. 643) transferring the Petitioner from Bhubaneswar to Kottakola, within the district of Ganjam.

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2. Shortly stated, the case of the Petitioner is that, he is a Grade 'D' employee serving in the Office of Superintending Archaeologist at Bhubaneswar. According to the Petitioner, the transfer has been affected mostly on request of some of the employees in the said office., though it is an innocuous order stating that it was on public interest and therefore, it is a colourable exercise of power really amounting to a punishment. The Petitioner had made a representation praying for cancellation of transfer which did not yield any fruitful result and hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintain that the order of transfer was passed on the recommendation of the transfer committee and the impugned order of transfer was served on the Petitioner on 28th December, 1990 and ²⁸he was received on the same day. The incumbent who has to join the post from which the Petitioner has been transferred, did ²⁸joined the said post on 2nd January, 1991. The Petitioner has also drawn Transfer advance etc. as it would be found from Annexures A & B to the counter, and further more it is maintained by the Opposite Parties that the Petitioner having been transferred to a place which is 10 kilometres from his Village home and the transfer ^{being} ~~is~~ in public interest, ²⁸which should not be unsettled - rather it should be sustained.

4. Before I discuss the contention advanced by the learned counsel for both sides, it is worthwhile to mention that the grievance of the Petitioner was considered

by a Bench and the Bench vide its order dated April, 5, 1991 dismissed the contention of the Petitioner upholding the order of transfer and further directed that the Petitioner should be allowed to retain the quarters till 30th June, 1991 and he should vacate the quarters on 1st July, 1991 and it was further directed that the Petitioner should move and join his new place of posting within two weeks from the date of passing of the judgment. Against this judgment, a review application was filed which was registered as Review Application No. 10/91. After hearing the Review Application, vide order dated 11.2.1992 the said judgment was cancelled because of the reasons stated therein and this matter has been re-heard.

3. I have heard Mr. A.B. Misra learned Senior Counsel appearing for the Petitioner and Mr. Ganeswar Rath learned Standing Counsel (Central) appearing for the Opposite Parties.

4. The very first contention of the Petitioner is that the impugned order of transfer amounts to a punishment because in paragraph 12 of the counter, it is maintained by the Opposite Parties that the Petitioner has used unparliamentary words against Senior officials, against his own colleagues and attempted to beat certain Grade II officers. This fact was also intimated to the association. Therefore, it was contended by Mr. Misra that the order of transfer being a punitive one the same should be quashed.

5. In my opinion, Mr. Misra has highlighted a part of the averments of the counter. In paragraph 12 of the

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counter it is stated that after the Petitioner was transferred and without joining the post to which he was transferred the Petitioner used unparliamentary words against Senior officials against his own colleagues and attempted to beat C.A. Grade-II Shri K.J.Lucka. All these incidents even if true, occurred after the impugned order of transfer was passed. Therefore, these incidents could not have been the basis for transferring the Petitioner. Therefore, I find no merit in the contention of Mr. Misra that the impugned order of transfer is a punitive one.

6. As regards the contention of Mr. Misra that the Petitioner has been transferred to another cadre in a different circle which is illegal and hence cannot be operative also deserves no merit because as pointed out by Mr. Rath in the cause title the Petitioner has designated himself as a Monument Attendant and he has been transferred in the same capacity to a place in the Ganjam District which is under control and supervision of Opposite Party Nos. 2 and 3. Apart from the above, this aspect has not found place in the pleadings. This part of the case has been set up for the first time during the course of argument and therefore it was rightly contended by Mr. Rath learned Standing Counsel no opportunity having been given to the Opposite Parties to meet this case of the Petitioner in their counter no weight should be attached to this argument of the petitioner. Hence I do hereby reject this contention of Mr. Misra. That apart from the statement made by the Opposite Parties in their counter that the petitioner has been transferred to a place near his village home or at least ten kilometres from his village home was not disputed before me on behalf of the petitioner. In such a situation, I am of opinion that the authority has considered

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the convenience of the Petitioner and
has transferred him to a place near his village home. In
such circumstances, question of mala fide or bias does not
arise. The facts of receipt of Advance TA and joining of
Appa Rao in the Post from which the Petitioner has been
transferred was not disputed before me. Therefore, in my
opinion the order of transfer cannot be interfered with
at this belated stage.

7. Lastly, it was contended by Mr. A.B. Misra
that transfer during mid-academic session would be a death
blow to the Petitioner and his school going children.
Undoubtedly, transfer should not be effected ordinarily during
the mid-academic session. But in the present case one cannot
lose the sight of the fact that the transfer order was
passed on 8th December, 1990 and the Petitioner has
successfully managed to stay till today by obtaining a stay
order. In such circumstances, it is no longer open to the
Petitioner to contend that he is being transferred in the
mid-academic session. If the Petitioner was very much interested
for the studies of his children, he should have taken a
decision to join his new place of posting in the middle of
the year 1991 when the academic session starts. Not having
done so, it is no longer open to the Petitioner to make a
grievance on this issue.

8. In view of the aforesaid facts and circumstan-
ces and the discussion made above, I find no merit in this
application which stands dismissed leaving the parties to
bear their own costs. Stay order stands automatically vacated.

K. S. Singh
31.3.92
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VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 85 OF 1991

Date of decision: April, 5, 1991

Bhaja Swain : Applicant
Versus
Union of India and others : Respondents.

For the applicant : M/s. A.B. Misra, C.R. Misra,
B. Nayak, D. Behura,
Advocates.

For the Respondents : Mr. Ganeswar Rath, Sr. Standing
Counsel, Central,

C O R A M:

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether the reporters of local papers maybe permitted to see the judgment? Yes.
2. To be referred to reporters or not? No
3. Whether Their Lordships wish to see the judgment or not? Yes.

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JUDGMENT

B.R.PATEL, VICE CHAIRMAN: This application has been filed before the Central Administrative Tribunal (the Tribunal) to direct the respondents to quash the order of his transfer. A copy of his transfer order is at Annexure-2 from which it is found that he has been transferred to Kotakala from his present station at Bhubaneswar.

The applicant has taken the following ground:

- 1) That the place to which he has been transferred is far away from his home and it will cause him considerable hardship;
- 2) The transfer order is dated 8th December, 1990 which is imposed in the Middle of education session. If this order is given effect to, the education of children ^{his} ~~will be~~ ⁱⁿ seriously disrupted;
- 3) That the transfer order has been ordered by way of punishment.

2. Mr. Ganeswar Rath the learned Senior Standing Counsel (Central) has sought an adjournment to file the counter. We have not allowed him time because

it is a simple matter ^{and is covered} ~~followed~~ by a stay order.

3. We have heard Mr. Nayak the learned Counsel for the applicant and Mr. Ganeswar Rath the learned Standing Counsel (Central) for the Respondents and perused the relevant records. Mr. Nayak has very vehemently urged that this is ~~the~~ policy of Government not to transfer Government employees of Gr'D' and the applicant is a monument attendant of the Archaeological monuments. He has further drawn our attention to paragraph-5 and VII of ^{the} ~~his~~ application. This paragraph states as follows: "The transfer is by way of punishment. The Respondent No.3 in his letter No. 5990 dated 8.2.1991 is understood to have written to Respondent No.2 as follows". No copy of the letter referred to above has been produced before us. But Mr. Nayak asserted that the portion ' is a reproduction of that letter' and it refers to the applicant. In addition to the grounds mentioned above, Mr. Nayak said that he has been transferred to a job which is outside ^{of} ~~to~~ the cadre. He however, admits that the applicant is transferred as manument attendant. We therefore, do not accept his plea that his transfer is to another cadre. He avers that the applicant belongs to village Athagarh Mandalavah post Office, Via: Balipada, District Ganjam and Kotakala the place to which the applicant has been transferred, is only 10 k.m.

from his place, and as such accore~~ding~~^{ing} to Mr. Rath it cannot be treated as ^a far off place from his residence. He has further contended that the applicant has remained at Bhubaneswar for long 20 years and it was time that he should go to another place. He denies that the transfer is ^{the result of a punitive} ~~cumulative~~ action. After having heard Mr. Nayak and Mr. Rath and having perused the papers, we are satisfied that the applicant has not been transferred to a far off place and it is apparent from Annexure-A which is also corroborative^{ed} by Annexure-A/6. Annexure-A/6 is a report made by the applicant to the competent authority for cancellation of the transfer order but it does not write a single word that the transfer is a ^{punitive} ~~cumulative~~ action. We noticed from Annexure -A/6 that the son of the applicant is reading in an English medium School and his son's education would be disrupted if he goes to the place of transfer because there is no such facility available there. Mr. Rath submitted that for English medium school the educational session ends by the end of the calender year. He has further submitted on behalf of the Department that the ^{applicant} ~~Department~~ will be allowed to retain the Government quarters till the completion of the present educational session. Mr. Nayak stated that

the applicant should be allowed to retain the quarters till the applicant is brought back to Bhubaneswar. We are unable to accept this plea of Mr. Nayak. Instead we direct that the applicant should be allowed to retain the quarters till 30th June 1991 he must vacate the quarters on 1st July, 1991. We also direct that the applicant must move within two weeks from today to his new post ^{by} ~~immediately~~ if he has not yet joined at the new place of his posting. Stay order stands vacated.

4. This case is accordingly disposed of.
No costs.

M. S. S. S. S.
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MEMBER (JUDICIAL)



P. S. S. S. S.
..... 5.4.91
VICE CHAIRMAN