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(7)

Central Administrative Tribunal
Cuttack Bench, Cuttack

Original Application No.204 of 1992

Date of decision: 12th October, 1992

Bighnaraj Meher Applicant

Versus

Union of India and others Respondents

For the applicant : M/s Deepak Misra, R.N. Naik,
A. Deo, B.S. Tripathy,
Advocates

For the Respondents : Mr. P.N. Mohapatra, Addl. St. Counsel

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CORAM:

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

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J U D G M E N T

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(8)

K.P.ACHARYA, V.C. In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner challenges the order of transfer passed by the competent authority contained in Annexures 1 and 3. Petitioner also challenges the order contained in Annexure 2 relieving the Petitioner from the Office of the Telecom District Engineer, Sambalpur in furtherance of the order contained in Annexure 1.

2. Shortly stated the case of the Petitioner is that while the Petitioner was working as an Assistant in the Office of the Divisional Engineer, Telecom, Sambalpur on his request the petitioner was transferred to Baragrah with a direction to join in the office of the S.D.O, Telegraphs vide order dated 1st May, 1991 contained in Annexure 1. Subsequently, the Petitioner changed his mind and made a representation to remain at Sambalpur and consequently the order passed transferring him to Baragrah was prayed to be cancelled. The Departmental Authorities acceded to the request made by the Petitioner and vide Annexure 3 dated 24th August, 1991 the Petitioner was posted under the S.D.O Telegraphs Sambalpur and the order transferring him to Baragrah was cancelled. All these orders are under challenge.

3. Counter has been filed on behalf of the Opposite Parties in which it is submitted that the application being devoid of merit is liable to be dismissed .

4. I have heard Mr. Deepak Misra learned Counsel appearing for the Petitioner and Mr. P.N. Mohapatra learned Additional Standing Counsel (Central).

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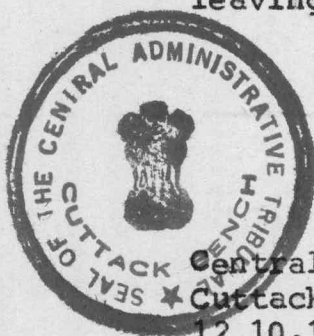
5. Mr. Misra strenuously urged before me that the Petitioner has no objection to join in the Office of the T.D.E, Sambalpur and hence ~~the~~ order be accordingly passed. This submission made by Mr. Misra was stiffly opposed by Mr. P.N.Mohapatra learned Additional Standing Counsel stating that normally an order of transfer passed on own request is never cancelled but the concerned authority has taken very sympathetic and kind attitude over the Petitioner and now the petitioner wants to take undue advantage of the leniency shown to the Petitioner.

6. Though Mr. Deepak Misra submitted that the Petitioner has no objection to join in the Office of the TDE, Sambalpur yet he could not give ^{convincing} a reason as to why the Petitioner would ^{be} prejudiced in joining the office of SDO Telegraphs at Sambalpur. I find no merits in the contention of Mr. Mishra because an employee under the Government has no choice for his place of posting ; rather I would find that there is a substantial force in the contention of Mr. Mohapatra that the concerned authority has been really very kind to the petitioner in acceding to all his request and also I find no justifiable reason on the part of the Petitioner not to have joined in the office of the SDO telegraphs, Sambalpur, soon after Annexure ³ dated 24th August, 1991 was passed by the competent authority.

7. I would therefore, direct the petitioner (while upholding the order contained in Annexure 4) that he should join in the office of the SDO telegraphs, sambalpur within

three weeks from today failing which the Opposite Parties would be at liberty to take necessary action against the Petitioner as contemplated under the law. Mr. Deepak Mishra further submitted that direction should be given to the competent authority to extend the joining time of the petitioner and the period during which the petitioner had not joined to be treated as 'dies non'. I am not prepared to give any such direction except that I would direct that the petitioner may file a representation before the competent authority and the competent authority may consider the prayer of the petitioner to allow leave due to the petitioner and if there is no leave due to the Petitioner, then it should be treated as 'no work no pay'. The period for which the Petitioner would not be entitled to pay may be treated as 'dies non'.

7. Thus, the application is accordingly disposed of leaving the parties to bear their own costs.



Central Administrative Tribunal,
★ Cuttack Bench, Cuttack/K. Mohanty/
12.10.1992.

K. Mohanty
12/10/92
VICE CHAIRMAN