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Central Administrative Tribunal
Cuttack Bench, Cuttack.

Original Application No.2 of 1992

Date of decision: 15.7.1992.

Madhusudan Misra ... Petitioner

-Versus-

Union of India and others ... Opp. Parties

For the Petitioner : M/s Devanand Misra,
Deepak Misra,
R.N.Naik,
A.Deo,
B.S.Tripathy,
P.Panda,
Advocates.

For the OP Nos.1 to 3 : Mr. Ashok Mohanty, Sr.St.Counsel.

For OP No.4 : Mr. Ganeswar Rath, Advocate.

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C O R A M:

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? *Yes*
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

K.P. ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the Petitioner prays to quash the order passed by the concerned authority transferring the Petitioner from Bhubaneswar to Barbil.

2. Shortly stated the case of the Petitioner is that before issuance of transfer order contained in Annexure_2, cum Accountant the petitioner had been working as Head Clerk in the Office of the Welfare Commissioner under the Ministry of Labour posted at Bhubaneswar. The Petitioner joined the Department

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on 26th June, 1964 and he was posted at Cuttack and thereafter the Petitioner was posted at Bhubaneswar for sometime and was transferred to Barbil wherein he worked from 24th February, 1975. Vide Office order No.2/29/88 dated 14th May, 1990 contained in Annexure-1, the Petitioner was transferred from the Office of the Assistant Welfare Commissioner at Barbil to Welfare Commissioner's Office at Bhubaneswar. Soon thereafter, the petitioner joined at Bhubaneswar and after he worked for about one and half years at Bhubaneswar he has been again transferred to Barbil. According to the Petitioner, Opposite Party No.4 who had been transferred to Barbil in the place of the present petitioner vide order dated 14th May, 1990 contained in Annexure-1 availed leave for a good bit of time and after working at Barbil for about 10 days he again availed leave till he successfully managed to obtain the order of his transfer, contained in Annexure-2, and in order to feedfat his grudge against the Petitioner, he has also managed to get the petitioner transferred from Bhubaneswar to Barbil. Hence this application has been filed with the aforesaid prayer.

3. Opposite Party Nos.1 to 3 have filed counter to the stay matter and it was submitted that it may be treated as the counter to the main case. Opposite Party No.4 Shri S.N.Naik has filed an application praying to vacate the stay order passed by this Bench staying the transfer of the Petitioner Shri Madhusudan Mishra which formed subject matter of Misc. Application No. 6 of 1992 and therein details have been stated regarding the circumstances under which the Petitioner has been transferred, and also the validity of the order passed by the competent authority transferring Opposite

Party No.4 (Shri S.N.Naik) to Bhubaneswar and it was also submitted that the counter filed to the stay matter be treated as counter to the main application.

4. I have heard Mr. Deepak Misra learned Counsel appearing for the Petitioner, Mr. Ashok Mohanty learned Senior Standing Counsel appearing for Opposite Party Nos.1 to 3 and Mr. Ganeswar Rath learned Counsel appearing for Opposite Party No.4 and Petitioner in Misc. Case No.6 of 1992.

5. Before I deal with the contentions put forward by the respective parties, it is worthwhile to note the law which relating to the cases of transfer has been settled by the Hon'ble Supreme Court in the case of M/s Shilpi Bose and Others Vs. Union of India and others reported in AIR 1991 SC 532. In the said judgment, Their Lordships have laid down that an order of transfer can be interfered with by a court on the ground of mala fide or violation of any statutory or mandatory rules. Hence keeping in view the dictum laid down by Their Lordships, the contentions of the learned counsel appearing for both parties has to be considered. The admitted case of the Parties before me is as follows:

- 1) The Petitioner joined the Department on 26th June, 1964 and having worked at Cuttack for sometime he was transferred to Bhubaneswar and thereafter he was transferred to Barbil with effect from 24th February, 1975 to 1976.
- 2) on 14th May, 1990, the Petitioner was transferred from Barbil to Bhubaneswar vide office order

dated 14th May, 1990, and Opposite Party No.4, Shri S.N. Naik was transferred from Bhubaneswar to Barbil to function in the post which was being held by the Petitioner Shri Misra.

3. Vide order dated 30.12.1991 contained in Annexure-2, the petitioner has been transferred to Barbil and Opposite Party No.4 has been transferred from Barbil to Bhubaneswar.

4. After receipt of the order of transfer, Opposite Party No. 4 Shri Naik did not join at Barbil and remained on leave for a goodbit of time and had worked at Barbil only for ten days.

7. Basing on these admitted facts, Mr. Deepak Misra learned counsel appearing for the Petitioner contended that Opposite Party No.4 moved from Pillar to Post and knocked at the doors of everybody concerned to get his transfer to Barbil cancelled and to be reposted at Bhubaneswar. Opposite Party No.4 being a very resourceful person could easily manage to be successful in getting his transfer order cancelled and also successfully managed to get the Petitioner Shri Misra transferred to Barbil which normally accrued to the benefit of Opposite Party No.4 in getting a posting at Bhubaneswar. All these facts taken together surely indicates that the higher authorities wanted to help Opposite Party No.4 and cause detriment to the interest of the Petitioner which surely amounts to mala fide.

8. On the other hand,, it was contended by Mr. Ashok Mohanty learned Standing Counsel that there is absolutely no malafide on the part of the concerned authorities and being convinced about the difficulties of O.P.No.4, the Higher authority directed transfer of OP No.4 from Barbil to Bhubaneswar and in his place, for public

interest

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the Petitioner Shri Misra has been transferred to Barbil which should be sustained and should not be quashed.

9. In addition to the above argument of Mr. Ashok Mohanty, Mr. Ganeswar Rath contended that Opposite Party No.4 did not join at Barbil because he had been transferred to a different establishment for which Opposite Party No.4 had a grievance and therefore, he had agitated his grievance before the appropriate authority that his transfer to a different establishment caused detriment to his service prospects and therefore, his transfer to Barbil should be cancelled and ultimately the concerned authorities being satisfied about his grievance, his, (Opposite party No.4,) transfer to Barbil had been cancelled. Since a very serious dispute was presented before me that Opposite Party No.4 had been transferred to a different establishment, Opposite Party No.3 had been called upon to answer the following questions:

"(i) Whether Opposite Party No.4, Shri S.N.Naik is required to join the same post which was being held by the Petitioner Shri Madhusudan Misra;

(ii) whether the post at Badabil to which Shri Madhusudan Misra is being transferred is an equivalent post like that of the post to which Opposite Party No.4 has been transferred;

(iii) whether the post to which Opposite Party No.4 is being transferred and the post to which Shri Madhusudan Misra is being transferred belong to different cadre;

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- (iv) whether the Director General (Labour and Welfare) Government of India (Opposite Party No.2) has passed any written orders directing transfer of Shri S.N.Naik (Opposite Party No.4) to a post at Bhubaneswar and if so an attested xerox copy of the order be filed into this court on the date of next hearing through the learned Standing Counsel Mr. Ashok Mohanty.

10. In reply thereto, Shri S.K.Sirka, Welfare Commissioner, Government of India filed a statement in which it is stated that the post at Barbil to which Shri Madhusudan Misra, petitioner is being transferred is an equivalent post to which Respondent No.4 has been transferred. Though Shri Misra has been designated as Head-Clerk-Cum-Accountant and Shri S.N.Nayak, (Opposite Party No.4) has been designated as Head Clerk, both the posts carry the same time scale of pay. It is further stated by Shri Sirka that after publication of the Recruitment Rules, the Posts of Accountant, Head Clerk-Cum-Accountant and Head Clerk have been grouped together and they will carry the designation of Head Clerk-Cum-Accountant. Opposite Party No.4 on transfer, will have to join the post held by Shri M.S.Misra and in paragraph 3, it is stated that both the posts belong to one cadre. Though at the initial stage of argument, Mr. Ganeswar Rath learned counsel appearing for the Opposite Party No.4 had vehemently contended that both the posts belong to different cadre but after the statement was filed Mr. Rath very fairly conceded that at present both the posts namely at Bhubaneswar and Barbil belong to the same cadre. Hence the aforesaid contention of Mr. Rath at the initial stage, deserves no merit.

11. Transfer is an incident of service and transfers are always made in public interest and in exigency of service. This case is of a peculiar nature. In the impugned order of transfer, there is no mention of the fact that either the petitioner Shri Madhusudan Misra has been transferred to Barbil in public interest or in

exigency of service. Nothing to the above effect has also been mentioned in the transfer of Opposite Party No.4, Shri S.N.Naik. Hence the impugned order of transfer does not say that the transfers ^{is} ~~are~~ _{in} in Public interest or in exigency of service. On the contrary, the transfer of Shri S.N.Naik (Opposite Party No.4) is on his own request and it has been passed as desired by the Director General. Of course a particular Government servant has no right to clinch to a particular post where he has been posted. He is liable to be transferred at any point of time but that liability of transfer should be worked out in a just and equitable basis. In the present case one would find that admittedly the Petitioner had been transferred to Barbil with effect from 24th February, 1975 and vide Annexure-1 dated 14th May, 1990, the petitioner has been transferred from Barbil to Bhubaneswar. After working for one year and seven months at Bhubaneswar the petitioner has again been transferred to Barbil vide order dated 30th December, 1990 contained in Annexure-2. This sufficiently indicates that the petitioner is being pushed from one side to the other according to the will and pleasure of the concerned authority in order to accommodate Opposite Party No.4. The fact that Shri Naik (OP No.4) has worked only for ten days at Barbil after the transfer order contained in Annexure-1 dated 14th May, 1991 was passed was not disputed before me. The transfer of both the incumbents either in Public interest or in exigency of service is lacking in the present case and this is substantiated by the fact that Opposite Party No.4 after working for ten days made a representation to the Director General

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contained in Annexure- G dated 27th June, 1991 praying for his posting at Bhubaneswar. This invoked the sympathy of the Director General and though the Petitioner had worked only for one and half years or a little more at Bhubaneswar, he was made to be shunted out to Barbil which is admittedly a Hill track area. Of course transfer on own request is certainly permissible and therefore, Their Lordships in the case of Mrs. Shilpi Bose and others (Supra) set aside the order of the High Court holding that transfer of Mrs. Shilpi Bose and others on their own request was illegal. Hon'ble Supreme Court observed otherwise laying down that transfer on own request is nothing illegal. I am certainly bound by the observations of Their Lordships of Hon'ble Supreme Court in the case of Mrs. Shilpi Bose and others but the distinguishing feature between the case of Mrs. Shilpi Bose and others and the present case is that Mrs. Shilpi Bose and others wanted to join their respective husbands at their place of posting. Therefore, Their Lordships took a favourable view because uprooting the inconvenience of a family causing irreparable harm to a Government servant and drive him to desperation could be avoided. But in the present case transfer of Shri S.N. Naik on his own request is to allow Shri Naik to avoid his joining at Barbil for which Shri Naik has been making a strenuous effort to avoid posting in the said station. This request of Shri Naik for transfer to Barbil is at the cost of the present petitioner who had served at Barbil for long years and definitely longer than Shri Naik. Therefore, principles laid down by Their Lordships of Hon'ble Supreme Court in the peculiar facts and circumstances of the case of Mrs. Shilpi Bose and others cannot come to the rescue of Shri S.N. Naik, Opposite Party No. 4.

12.

I am equally bound by the law laid down by Their Lordships of Hon'ble Supreme Court in the case of B. Varadha Rao Vs.

State of Karnataka reported in AIR 1986 SC 1955. Their Lordships were pleased to observe as follows:

"One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a Government servant and drive him to desperation. It disrupts the education of his children and leads numerous other complications and problems and results in hardship and demoralisation. It therefore, follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But at the same time it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration. It creates vested interest and therefore, we find that even from the British times the general policy has been to restrict the period of posting for a definite period. We wish to add that the position of Class-III and Class IV employees stand on a different footing. (Emphasis is mine). We trust that the Government will keep these considerations in view while making an order of transfer".

13. In the present case one would find that there has been a frequent and unreasonable transfer of the present petitioner which would unnecessarily disrupt the education of his children and would cause great hardship and demoralisation. The Opposite Parties have failed to successfully make out a case of transfer in public interest/exigency of service or on administrative grounds which are most important ingredients for sustaining an order of transfer. At the cost of repetition, I may say that the transfer of the Petitioner to Barbil within a span of one and half years from the date of posting of the Petitioner at Bhubaneswar is only to favour or accommodate Opposite Party No.4 and therefore, it would be unjust and improper to uphold the impugned order of transfer contained in Annexure 2 dated 13th December, 1991. It is therefore, quashed. As regards, Misc. Application No.6 of 1992 filed by the Opposite Party No.4 to vacate the stay order is concerned, no further orders need be passed in view of the fact that the impugned order of transfer contained in Annexure 2 stands quashed. The Misc.

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Case is accordingly disposed of. Since the impugned order of transfer stands quashed necessarily original application No.2 of 1992 stands allowed leaving the parties to bear their own costs.



Central Administrative Tribunal
Cuttack Bench/K.Mohanty/15.7.92

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VICE CHAIRMAN