

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No. 289 of 1992

Date of Decision: 20.7.1992

Hemanta Kumar Patnaik

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. J. Das
K. P. Misra
B. S. Tripathy
S. Mallick
Alok Das,
Advocates

For the respondents

Mr. K. C. Mohanty,
Government Advocate
(State of Orissa)

C O R A M

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

AND

THE HONOURABLE MR. M.Y. PRIOLKAR, MEMBER (ADMN)

• • •

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

• • •

5

JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act,1985, the petitioner Shri H.K. Patnaik prays to quash the order passed by the competent authority contained in Annexure-1 dated 23.6.1992 placing the services of the petitioner with Orissa Forest Development Corporation which amounts to transfer of the petitioner from the post of Conservator of Forests (Kendu Leaf), Sambalpur.

2. Shortly stated the case of the petitioner is that he is a Member of the Indian Forests Service and after serving in different capacities, in May, 1990 the petitioner was posted as Conservator of Forests (Kendu Leaf), Bolangir Circle and after expiry of six months of service at Bolangir, the petitioner was transferred to Sambalpur and posted as Conservator of Forests, Sambalpur and while the petitioner was continuing as such, OP No.1, i.e. State of Orissa, represented through its Secretary to the Government of Orissa in the Department of Forests and Environment, transferred the petitioner from Sambalpur and is services were placed with Orissa Forest Development Corporation with an ill and improper motive. This will be apparent from the fact that the petitioner has hardly completed one and four months of service at Sambalpur. Hence this application has been filed with the aforesaid prayer.

3. This case came up for admission on 30.6.1992 before the learned Single Judge and before whom it was contended that the impugned order of transfer is illegal and inoperative under the law because according to the dictum laid down by this Bench

6

in Original Application No. 78 of 1991 disposed of on 24.12.1991 (B.K.Shukla vs. State of Orissa & another), any matter involving an officer belonging to the cadre of I.A.S./ I.P.S. and I.F.S. has to be placed before the Chief Minister for his orders and according to the Rules of Business, failing which the impugned order is inoperative being a nullity and in the present case the proposal for transfer of the petitioner was not placed before the Chief Minister and consequently his orders have not been obtained. The learned Single Judge had called for the relevant file and vide order dated 30.6.1992, the learned Single Judge ~~had~~ stayed operation of the impugned order of transfer. Though this case under the rules, could be legitimately disposed of finally by the learned Single Judge yet, due to the urgency of the matter, this was placed before the Division Bench for hearing and on 16.7.1992, we have heard Mr.J.Das, learned counsel for the petitioner and Mr.K.C.Mohanty, learned Government Advocate for the State of Orissa on the merits of the case.

4. At first we would like to dispose of the contention put forward by the learned counsel for the petitioner that the matter was not placed before the Chief Minister for his orders and therefore the order of transfer is illegal and inoperative. On a perusal of the file in question we found that the Secretary to the Government of Orissa in the Forest Department proposed the transfer of the petitioner Shri H.K. Patnaik from the post of Conservator of Forests, Sambalpur ^{his services} and ~~to be~~ ^{to} be placed with the Orissa Forest Development Corporation. Shri R.N. Das, Additional Chief Secretary

endorsed the file to the Minister who in his turn recommended the proposal to the Chief Minister and the Chief Minister vide his order dated 19.6.1992 accepted the proposal. Therefore the contention of the learned counsel for the petitioner that the approval of the ^{by} approval of the Chief Minister was not taken is incorrect and devoid of merit.

5. It was next contended by the learned counsel for the petitioner that the petitioner has only two years more to retire on superannuation and dislodging the petitioner from Sambalpur would amount to inconvenience to his family including the inconvenience to be caused to the studies of his children and therefore this order is in violation of the administrative instructions/guidelines issued by the Government. In the case of Mrs. Shilpi Bose & others vs. State of Bihar & others reported in AIR 1991 SC 532, Their Lordships have laid down that the Court ~~should not~~ ^{should not} interfere with an order of transfer only when there is a violation of mandatory, statutory rules or in the cases of mala fide. Though in the pleadings it is stated that OP No.1 has passed the order of transfer with an ill motive, but the case of mala fide was not argued. There is no allegations of violation of mandatory, statutory rules. The Supreme Court has further held in the case of Mrs. Shilpi Bose that in case there is violation of any administrative instructions then the affected party should move his higher authorities. Therefore on the question of violation of administrative instructions, which was argued by the learned counsel for the petitioner, the petitioner should move his ^{authorities}

8 8

if so advised. In such circumstances we do not feel inclined to quash the order of transfer which is hereby sustained. Mr. J. Das, learned counsel for the petitioner submitted that the petitioner intends to move the Government for reconsideration of his case. We have no objection. In case a representation is filed, the Government may consider the same in the light of the observations made by the Hon'ble Supreme Court in the case of B. Vardhan Rao Vs. State of Karnataka reported in AIR 1986 SC 1955. Observations of Their Lordships are quoted hereunder:

" 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".

6. We hope and trust that representation, if any, filed by the petitioner would be disposed of within a month therefrom. The Government will be well advised to stay operation of the transfer order till the final disposal of the representation, because the prayer may become infructuous. Thus ~~v the application~~ is accordingly disposed of. No costs.

H. S. S.
MEMBER (ADMINISTRATIVE)
Central Administrative Tribunal
Cuttack Bench, Cuttack
BKSahoo



20.7.92
VICE-CHAIRMAN