

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.313 of 1992.

Date of decision : July 20, 1992.

Prasanna Kumar Parida ...

Applicant.

VERSUS

Union of India and others ...

Respondents.

For the applicant ... M/s. Deepak Misra,
A.Deo, P.K.Farida, Advocates.

For the respondents ... Mr. K. C. Mohanty,
2 & 3 Government Advocate (State)

C O R A M:

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

AND

THE HONOURABLE MR. M. Y. PRIOLKAR, MEMBER (ADM N.)

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

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JUDGMENT

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the order contained in Annexure-2 dated 23.6.1992 transferring the applicant, Shri Prasanna Kumar Parida, a member of Indian Forest Service from Berhampur to Bhubaneswar.

2. Shortly stated, the case of the applicant, Shri Prasanna Kumar Parida, is that vide Office order No.15437 dated 27.8.1991 contained in Annexure-1 Government of Orissa in Forest and Environment Department allowed officiating promotion to the applicant to the rank of Conservator of Forests and the applicant was posted as such in Berhampur Circle. The applicant joined the post on 31.8.1991. The applicant has a grievance relating to his transfer from Berhampur to Bhubaneswar contained in Annexure-2 which is said to have occurred within 10 months from the date of his joining. Hence, this application has been filed with the aforesaid prayer.

3. Notice was issued to the respondents to show cause as to why this application should not be allowed.

4. We have heard Mr.Deepak Misra, learned counsel for the applicant and Mr.K.C.Mohanty, learned Government Advocate (State) for the respondents 2 and 3.

5. At the time of admission the first ground taken was to quash the order of transfer because the approval of the Chief Minister had not been taken before the transfer order was passed. It was contended on behalf of the applicant that this Bench has also held in O.A.78 of

1991 disposed of on 24.12.1991 (B.K.Shukla versus State of Orissa and another) that according to the Rules of Business any matter relating to an All India Officer - be it Indian Administrative Service, Indian Police Service or Indian Forest Service, must be placed before the Chief Minister for orders without which any orders passed is a nullity and hence inoperative. True it is that in O.A.78 of 1991 this Bench has held that matters involving an Officer belonging to the cadre of I.A.S./I.P.S./I.F.S. must be placed before the Chief Minister for orders. Therefore, we had called upon the Respondent No.3 i.e. the Secretary to the Government of Orissa, in the Department of Forest and Environment to cause production of the relevant file so as to find out whether proposal for transfer of the applicant from Berhampur to Bhubaneswar had been placed before the Chief Minister and orders were obtained from him. The file was produced before us and we find therefrom that the Secretary to the Government of Orissa in Forest Department proposed that Shri Prasanna Kumar Parida, Conservator of Forests, Berhampur should be transferred to the Office of the Principal Chief Conservator of Forests, as Conservator of Forests (Evaluation). Additional Chief Secretary, Shri R.N. Das and the Minister(Forests), agreed with this proposal and accordingly submitted the file to the Chief Minister who confirmed the proposal. Therefore, the contention put forward on behalf of the applicant that orders of the Chief Minister had not been obtained is not correct and

hence devoid of merit.

6. During the course of argument Mr. Deepak Misra submitted that after joining the post of Conservator of Forests, at Berhampur within 10 months the applicant has been transferred which would be prejudicial to the interest of his children who are studying at Berhampur and various there would be ~~great~~ difficulties on the part of the applicant to prosecute the studies of his children at Bhubaneswar as it would be utterly difficult on his part to get his children admitted in Schools and Colleges at Bhubaneswar. However, so far as this contention is concerned, Judiciary cannot pass any orders in view of the dictum laid down by Their Lordships of the Supreme Court in the case of Mrs. Shilpi Bose and others vrs. State of Bihar and others reported in AIR, 1991 SC 532 in which Their Lordships have been pleased to hold that Courts can strike down the order of transfer when there is violation of mandatory statutory Rules, or allegation there is ~~no~~ of bias or malafide. In the present case, there is no allegation of malafide or violation of statutory mandatory Rules. In the said case, Their Lordships further observed that once there is violation of administrative instructions, the affected party should move the higher authorities instead of seeking interference by Court. Therefore, alternative submission was made by Mr. Deepak Misra that leave should be granted to the applicant to move the higher authority by filing a representation to sympathetically consider the case of the applicant for cancellation of the transfer order keeping in view the

Observations made by Their Lordships in the case of B.Varadha Rao v. State of Karnataka reported in AIR 1986 SC 1955. Their Lordships have been 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 ours). We trust that the Government will keep these considerations in view while making an order of transfer. "

We hope and trust that if a representation is filed by the applicant, the appropriate authority would take into consideration the observations of Their Lordships quoted above vis-a-vis the difficulties pointed out by the applicant and pass necessary orders as deemed fit and proper, though we do not like to interfere with the order of transfer. We hope and trust, representation, if any filed, shall be disposed of within a period of one month therefrom and the Government will be well advised not to effect the order of transfer pending final disposal of the representation lest the prayer made in the representation, may become infructuous.

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

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MEMBER(ADMINISTRATIVE)

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VICE-CHAIRMAN

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

