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Central Administrative Tribunal
Cuttack Bench, Cuttack

Original Application No. 315 of 1992

Date of decision: 15th July, 1992

Laxman Naik Applicant

Versus

Union of India and others Respondents

For the applicant

: Mr. D.P. Dhalsamant, Advocate.

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CORAM:

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

AND

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

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

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JUDGMENT

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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 of the Petitioner contained in Annexure-1 transferring the Petitioner Shri Laxman Naik from Baranga ^{Kendupaddi} Railway Station to ^{Kendupaddi} ~~Keduspalli~~ Railway Station in the district of Balasore.

2. We did not like to keep this case pending unnecessarily because ultimately it ^{will} ~~did~~ not yield any fruitful result, in view of the fact stated on behalf of the petitioner and therefore, we decided to dispose of the case finally on merits.

3. In the case of ~~Mrs~~ Shilpi Bose Vs. Union of India and Others reported in AIR 1991 SC 532, Their Lordships have held that an order of transfer can be quashed on the ground of mala fide or violation of statutory mandatory rules and in case there is any violation of administrative instructions or in regard to personal inconvenience of the party affected, then he should move the higher authority.

4. We have heard Mr. Dhalsamant learned Counsel for the petitioner. In the present case, there is absolutely no allegation of malafide or violation of any statutory ~~or~~ mandatory rules. Hence rightly Mr. Dhalsamant did not advance any argument, on this ground. The only argument advanced by Mr. Dhalsamant is, it will be utterly difficult on the part of the petitioner to ^{Kendupaddi} take his family to ^{Kendupaddi} ~~Keduspalli~~ because Petitioner's wife is suffering from Cancer. We are not in a position to decide the correctness of this statement. That apart these are matters to be decided by the administrative authority.

5. Mr. Dhalsamant submitted before us that he intends to file a representation before the competent authority i.e.

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Divisional Railway Manager, Khurda Road and the Senior Divisional Personnel Officer. We have no objection. It would be most appropriate for the competent authority (whoever he may be) either the D.R.M. or the S.D.P.O to investigate into this matter by consulting the prescriptions which must have been issued in favour of the Petitioner's wife and the medicines purchased by him on this account and any other materials placed to substantiate the case of cancer and in case the competent authority ^{is satisfied} that the petitioner's wife is suffering from cancer, a sympathetic view should be taken over the petitioner especially keeping in view that an employee cannot work with a peaceful mind at a distant place when his wife is suffering from Cancer if at all it is true. It was further submitted by Mr. Dhalsamant that he will file a representation by 22nd July, 1992 alongwith a medical certificate, prescriptions, cash memos showing purchase of medicines etc. ^{along with a copy of this judgment} ~~within instant~~ and within three weeks therefrom i.e. by 15th August, 1992 the competent authority should express his opinion as to whether the order of transfer should be quashed or ^{to} be sustained. Till then the order of transfer from Baranga to Kenduspalli ^{Kenduspalli} is hereby stayed and this would become effective as soon as orders are passed by the competent authority either accepting the case of the petitioner or rejecting the representation.

6. Send a copy of this judgment forthwith to Opposite Parties by Regd. Post with AD and a copy of this order be made available to the counsel for the Petitioner.

7. Thus, the application is accordingly disposed of.
No costs.

15-7-92
MEMBER (ADMINISTRATIVE)

15/7/92
VICE CHAIRMAN