

90

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 356 of 1992.

Date of decision : November 9, 1992.

Baikuntha Nath Mishra ...

**Applicant.**

## Versus

Union of India and others ...

### Respondents.

For the applicant ..

M/s. Devan and Misra,  
Deepak Misra  
A. Deo, B. S. Tripathy,  
P. Panda, D. K. Sahoo,  
Advocates.

For the respondents ...

Mr. Ashok Misra,  
Sr. Standing Counsel (Central)

### C O R A M :

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

• • •

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

• • •

JUDGMENT

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash Annexure-3 by virtue of which the applicant has been transferred from Bhubaneswar to Calcutta.

2. Shortly stated, the case of the applicant is that he has been working as Welfare Officer, Central Social Welfare Board in the Office of the State Social Welfare Advisory Board, Nayapalli, Bhubaneswar. The applicant was serving at Nagaland from 27.9.1988 to 29.10.1990. The applicant vide Annexure-1 was transferred on his own request to Orissa and he was stationed at Bhubaneswar, when he joined the post in question on 31.10.1990. Now, the applicant has been transferred to Calcutta for which he has a grievance. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that the transfer order is in public interest and in the interest of administration. Therefore, the order of transfer should be upheld and should not be quashed.

4. I have heard Mr.B.S.Tripathy, learned counsel for the applicant and Mr.Ashok Misra, learned Senior Standing Counsel(Central) for the respondents.

5. Mr.B.S.Tripathy contended that the wife of the applicant is serving as a Lecturer at Rajadhani College, Bhubaneswar. Just because to have the company of the wife and children the applicant had prayed to be transferred from Nagaland to Bhubaneswar which was allowed. Even

though two years of stay in Orissa has not yet expired the applicant has been transferred to Calcutta. This step taken by the authorities would uproot the convenience and other related matters of the family including the education of the children. Mr. Tripathy relied upon the observations of Their Lordships in the case of B. Varadha Rao vrs. State of Karnataka and others, reported in AIR 1986 SC 1955. The dictum laid down by Their Lordships will be dealt at the appropriate stage. On the other hand, Mr. Ashok Misra, learned Senior Standing Counsel relied upon the observations of Their Lordships in the case of Mrs. Shilpi Bose and others vrs. State of Bihar and others, reported in AIR 1991 SC 532 and observations of Their Lordships in the case of Union of India and others vrs. H.N. Kirtania and has contended that Court should not interfere with the day to day orders of transfer which would tell upon the Administration.

6. Nodoubt, in the case of Mrs. Shilpi Bose the Supreme Court observed that court should not invariably interfere with the day today administrative orders including the transfer orders passed by the Government, and if interfered with, administration will lead to chaos. <sup>but in</sup> True it may be so, ~~in~~ the case of Mrs. Shilpi Bose and others <sup>was</sup> allowed by the Hon'ble Supreme Court because the Hon'ble Judges of the Patna High Court cancelled the order of transfer passed by the competent authority transferring Mrs. Shilpi Bose and others to join their respective husbands. Hence, Their Lordships were of the view that the transfer on their own requests to join their husbands was no way illegal and therefore, the <sup>1/1</sup>

judgment of the Patna High Court was quashed. In the present case, the admitted position is that the husband and wife are stationed at Bhubaneswar. The circulars issued by the Government and looking at the intention with which the judgment of the Patna High Court was quashed clearly establishes the intention of the Government and the Hon'ble Supreme Court that husband and wife should be posted, as far as possible, in the same <sup>his</sup> station. Ofcourse by <sup>itself</sup> I do not mean to say that a Government servant has <sup>the</sup> <sup>a</sup> <sup>right</sup> prospective right of remaining <sup>in</sup> in one station till his retirement to have the company of his wife. But allowing the applicant to have the company of his wife and children only for two years after he <sup>had</sup> lost their company for the last two years being in Nagaland, would cause more hardship to the applicant. So far as the observations of Their Lordships in the case of Union of India and others vrs. H.N.Kirtania (supra) is concerned, Their Lordships have categorically held that unless there are strong pressing grounds to quash the order of transfer, transfer order should not be interfered. Certain transfer order cannot be quashed mechanically and in usual course of business. Moreover, each case is governed by its own facts and circumstances and therefore, Their Lordships had given liberty to the subordinate courts to use their discretion in fit cases namely where there are strong and pressing grounds <sup>such transfer orders could be quashed.</sup> to quash the order of transfer. <sup>As</sup> Here in the present case strong and pressing grounds are the applicant was posted to a disturbed place for two years namely Nagaland. The

applicant joined the post in question at Bhubaneswar in October, 1990. Before expiry of two years the applicant has been transferred to Calcutta thereby depriving the company of his wife and children, which would have demoralising effect over the applicant. Therefore, in the case of B. Varadha Rao (supra) 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 to 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. We trust that the Government will keep these considerations in view while making an order of transfer. "

7. I have absolutely no iota of doubt in <sup>my</sup> ~~our~~ mind to hold that the circumstances laid down in paragraph 6 of the judgment have not been taken into account so far as the present case is concerned. <sup>I</sup> ~~We~~ would repeat and say that the applicant cannot claim a posting in the same station as that of his wife till his retirement but the Government should consider to post the applicant to the same station where his wife is serving for a reasonable period or at least till expiry of the tenure as laid down in the administrative instructions. However, in the present case, the observations of Their Lordships in the case of

(14)

B. Varadha Rao <sup>and</sup> <sub>so</sub> also the intention with which the case of Mrs. Shilpi Bose and others was allowed applies in full force to the facts of the present case.

8. Lastly, Mr. Ashok Mishra relied upon a judgment of the Central Administrative Tribunal, Principal Bench, New Delhi which formed subject matter of O.A.2905 of 1991 (S.K.Bajaj vrs. Union of India). In the said case, the Hon'ble Judges laid down certain guidelines in ordering transfer and held that the provisions contained under section 20 of the Act not having been complied with, the applicant should file a representation and the matter should be disposed of. Relying on this judgment Mr. Ashok Misra, learned Senior Standing Counsel (Central) contended that section 20 of the Act not having been complied with, the case should be dismissed in limine.

9. In several cases in the past the Division Bench has clarified the word 'ordinarily' relying on a decision of the Supreme Court reported in AIR 1961 SC 1346 (Kailash Chandra vrs. Union of India). Their Lordships of the Supreme Court have been pleased to lay down that the word 'ordinarily' means in the larger majority of cases but not 'invariably'.

Discretion has been vested with the Tribunal to deal with each case according to its facts and circumstances. Where emergent situation needs immediate interference, the word 'ordinarily' must be made use of in favour of the applicant and impediment has to be waived. In the instant case, since the petitioner <sup>may</sup> <sub>be</sub> relieved without a stay order having been obtained

from the Court the applicant has to join in his new place of posting and file a representation. It is not known how long it will take to dispose of the representation. But even if it is presumed that the representation would be disposed of as early as possible then by that time the ~~portals~~ of the Court may be shut out for the party aggrieved because he has already joined the new place of posting. I am conscious that each case is to be governed by its own facts and circumstances and the word 'ordinarily' should be made use of depending upon the facts and circumstances of the case. <sup>at hand</sup> No doubt, I am bound by the views pronounced by the Division Bench but if the views are distinguishable, I am unable to accept the contention of Mr. Ashok Misra that the case should be dismissed because of not availaing the remedy contained in Section 20 of the Act.

10. In view of the discussions made above, the transfer order transferring the applicant from Bhubaneswar to Calcutta is hereby quashed.

11. Thus, this application stands allowed leaving the parties to bear their own costs.

*K. S. Ch.*  
9. XI. 92

\*\*\*\*\*  
VICE-CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench, Cuttack  
November 9, 1992/Sarangi

