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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 403 of 1992.

Date of Decision: 30.10.1992

Sri A.V.Satyanarayana Applicant.

Versus

Union of India & Others Respondents.

For the applicant:-
M/s. B.S. Misra,
S.Ch. Kar
G. Misra
Advocates.

For the respondents:
Mr. A.K. Misra,
Standing Counsel

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C O R A M.

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

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1. Whether the reporters of local news papers may be allowed to see the Judgment ?
2. To be referred to reporters or not ? NO
3. Whether His Lordship wishes to see the fair copy of the Judgment ?

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JUDGMENT.

K.P.ACHARYA, VICE-CHAIRMAN.

In this application Under Section 19

of the Administrative Tribunals Act, 1985 the petitioner prays to quash the order contained in Annexure-1 passed by the Superintendent, R.M.S., K.Division, Jharsuguda on 26th May 1992 transferring Sri A.V.Satyayana (Petitioner) from Sambalpur to Titilagarh.

2. Shortly stated the case of the petitioner is that he was appointed as a Time Scale Clerk on 17.4.67 and was promoted to the L.S.G.Cadre w.e.f. 1982 and thereafter the petitioner was posted at Sambalpur as L.S.G. Supervisor in the month of November, 1989 with a special pay of Rs.40/- per month. The post held by the petitioner has since been abolished and hence he has been transferred to Titilagarh. This application has been filed to quash the impugned order passed by Opp. Party No.3 i.e. the Superintendent.

3. In their counter the Opp. Parties maintain that the transfer order has been passed in Public interest and for Administrative exigency. Since the post held by the present petitioner was abolished by the competent authority and petitioner became a surplus member of the Staff at Sambalpur he has therefore been transferred to Titilagarh. Further case of the Opp. Parties is that the Opp. Party no.4 has not completed his tenure at Sambalpur and therefore he has not been transferred.

4. I have heard Mr. B.S. Misra, learned counsel

for the petitioner and Mr. Aswini Ku. Misra, learned standing counsel at a considerable length.

4. The petitioner challenges the order of transfer on several grounds which are stated hereunder;

(i) Abolition of the post held by the petitioner has not been passed by the competent authority and such order of abolition having been passed by the Superintendent of Post Offices the order of abolition of the post in question is a nullity being without jurisdiction.

(ii) Conceding for the sake of argument that the order of abolition of the post in question was passed by the competent authority the petitioner being senior to Opp. Party No. 4 and the Opp. Party no. 4 having ^{been} remained for a longer period at Sambalpur, he should have been transferred.

(iii) Educational facilities for the study of the children of ~~the~~ petitioner at Titilagarh as will be seriously hampered as there is no Central School at Titilagarh and therefore the order of transfer should be quashed.

5. In their counter the Opp. Parties admit that the petitioner is Senior to Opp. Party No. 4. In Paragraph-4(3) of the counter it is stated as follows:-

" Although the Opp. Party no. 4 is Junior to the petitioner the dates shown in ~~his~~ petition are wrong".

It is further maintained in the counter that first come and first go principle will not be applicable to the transfer of a particular incumbent and therefore the

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competent authority having chosen the petitioner to be transferred to Titilagarh should not be quashed - rather it should be sustained. It is further more maintained that the department has no obligation to order transfer and posting of an employee to accommodate his children in the Central School.

6. The initial question that needs determination as to whether the post in question has been abolished by an authority not vested with the powers for abolition. In this connection Mr. Aswini Ku. Misra invited my attention to Annexure-7 which is a copy of the Memo issued by the Post Master General, Sambalpur abolishing the post in question. The Post Master General has derived authority from Letter No. 6-14/87-FC/Posts dtd. 3rd. July, 1990 issued by the Director General, Department of posts contained in Annexure-5. In the said letter the Director General has authorised the Post Master General with powers to abolish posts. Vide Annexure-7 dtd. 28th April, 1992 the Post Master General, Sambalpur abolished the post in question. Therefore, the contention put forward on behalf of the petitioner regarding abolition of the post by the Superintendent of Post Offices is not correct and hence I find no merit in this contention.

7. As regards the next contention of the learned counsel for the petitioner regarding the educational facilities for the studies of his children not being available at Titilagarh, as there is no Central School at Titilagarh,

I am of the opinion that undoubtedly the parent are responsible for better education of their children. But having joined a transferable post a particular Postal employee if gets his children admitted in a Central School ^{at his own risk} at his own risk. It will not be justified on the part of such government employee to choose a place of posting and insist for his transfer to a station where there is a Central School. In that case the employee will be left with his choice of posting which is not permitted under the law. If the parent is vehemently interested for education of his children he can ^{make} ~~make~~ his private arrangements for the betterment of Educational facility of his children but he or she cannot be vested with a choice for his place of posting. Therefore I find no merit in the aforesaid contention of the learned counsel for petitioner.

8. As regards the contention put forward on behalf of the petitioner that the Opp. Party No. 4 has stayed for a longer period than the petitioner, at the out set I may say that the petitioner has furnished certain dates of his appointment in the grade of L.S.G. (Supervisor) Vis-a-vis the Opp. Party No. 5. In their counter the Opp. Parties have mentioned the dates of promotion of the petitioner and that of Opp. Party No. 4 to different grades. No documents has been filed by the petitioner to corroborate his statement regarding the dates of appointment of his own and that of Opp. Party No. 4

as stated in the petition. On the contrary the Opp. Parties have furnished such documents and therefore I do hereby accept the dates of appointment of the petitioner and that of Opp. Party No. 4 to different grades as mentioned by the Opp. Parties in their counter. Even though I accept the dates furnished by the Opp. Parties, yet admittedly the petitioner is senior to Opp. Party No. 4. Even though the post in question has been abolished by the competent authority consideration for transfer of a particular incumbent should have been considered on the basis of seniority and longer period of stay of particular incumbent in a particular station. By this I do not mean to say that as a general rule at all times the Senior Officer and the longer period of stay of a particular Officer in a particular station is the criteria for ordering transfer because transfer of a particular person is subject to exigency of service, Public interest and administrative reasons. In the present case a general statement ^{has been} made by the Opp. Parties that due to Public interest and ^{the} exigencies of service, the petitioner was chosen to be transferred. No details have been stated as to what was the particular administrative reason for which the petitioner was chosen to be transferred from Sambalpur to Titilagarh and not Opp. Party No. 4 especially when there is a specific averment challenging retention of the Opp. Party no. 4 and transferring the petitioner. Even though I have held that a particular employee cannot have a choice of a place of posting and in all

cases seniority and longer period of stay in particular station cannot be criteria for transfer, yet from the point of view of Justice Equity and Fair play a particular incumbent staying for longer period should be considered for transfer rather than a Senior Officer who has stayed in a particular station for a lesser period than the other officers when both the officers are of the same rank. It is stated as follows by the Opposite Parties in Para-4(ix) of the Counter:-

" The Opposite Party No.4 has been working as Sub-Record Officer, Sambalpur and the petitioner has been transferred to work as Sub-Record Officer, Titilagarh. Both the posts are of same cadre and same rank".

I must clearly state that by this I do not mean to say that Opp. Party No.4 should be disturbed and it should not be construed that any such direction has been given by this Bench.

9. In the circumstances stated above I do hereby quash the order passed by the competent authority transferring the petitioner from Sambalpur to Titilagarh with a direction that the Post Master General, Sambalpur may re-consider the entire matter and pass necessary order according to law as to who should be transferred from Sambalpur to Titilagarh. In the peculiar facts and circumstances of the case I would very much like a reasoned order to be passed by the Post Master General if he still wants the petitioner
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to be transferred to Titilagarh. This aspect is completely left to the discretion of the P.M.G..

10. In case, after consideration, the Post Master General is of opinion that the petitioner should be transferred to Titilagarh then such order of transfer should be made effective after 31st December, 1992 so that the academic Session of the Central School for the current year is over, which would enable the petitioner to make his private arrangements.

11. Thus the application is accordingly disposed of leaving the parties to bear their own costs.

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VICE- CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack/ Hossain.



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30-10-92