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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A. No. 409 OF 1992.

Orissa Income Tax Employees Union :Petitioners  
Versus  
Union of India and others :Opp. Parties.

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O.A. No. 458 OF 1992.

Subash Chandra Dash :Petitioner  
Versus  
Union of India and others :Opp. Parties.

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O.A. No. 459 OF 1992

Dasarathi Mohanti :Petitioner  
Versus  
Union of India and others :Opp. Parties.

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O.A. No. 380 OF 1992

P.V. Raman Rao :Petitioner  
Versus  
Union of India and others :Opp. Parties.

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O.A. No. 425 OF 1992

Krushna Ch. Parida :Petitioner  
Versus  
Union of India and others :Opp. Parties.

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O.A. No. 486 OF 1992

Duryodhan Rana :Petitioner  
Versus  
Union of India and others :Opp. Parties.

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Date of disposal : 2nd February, 1993.

For the Petitioner  
(In O.A. No. 496/92)

... M/s. D.N. Misra and  
S.C. Samantaray,  
Advocates.

For the Petitioner  
(In O.A. No. 424/92)

... M/s. P. Nayak, P.K. Nayak,  
M.K. Mangaraj Mohapatra  
Advocates.

For the Petitioner  
in all other OAs

... Mr. B.L.N. Swamy,  
A.K. Rath,  
N.K. Barik,  
S.K. Das,  
Advocates.

For the Opposite Parties  
in all these cases

... Mr. A.K. Ray,  
Sr. Standing Counsel  
(Income Tax).

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C O R A M :-

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN  
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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 His Lordship wish to see the fair copy of the judgment? Yes.

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J U D G M E N T

K.P.ACHARYA, V.C.

The Petitioners in Original Application No.409 of 1992 is the Orissa Income Tax Employee Union. The Members of the Union challenge the guidelines set forth by the Commissioner, Income Tax Department, Orissa contained in Annexure 3 to be arbitrary, illegal, unjust, and improper and not in consonance with the guidelines issued by the Central Board of Direct Taxes contained in Annexure 2. Hence it is prayed by the representative of the Union that the transfer order passed by the Commissioner Income Tax, Orissa, should be quashed. Petitioners in Original Application Nos. 380, 424, 458, 459 and 486 of 1992 are employees of the Income Tax Department. The Petitioners have been transferred to different places in the State of Orissa to act in different capacities. Such orders of transfer are under challenge before this Court adopting the same case as that of Original Application No.409 of 1992 that such orders of transfer are in clear violation of the guidelines.

2. In their counter, the Opposite Parties maintained (in all these cases) that there has been no deviation from the guidelines issued by the Central Board of Direct Taxes and such transfer is in the interest of administration and public exigency of service. Therefore, according to the Opposite parties, <sup>order</sup> the transfers <sup>in</sup> should not be quashed - rather they should be sustained.

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3. I have heard each of the cases separately one after other, from Mr. B.L.N. Swamy learned counsel appearing for the Petitioners in Original Application Nos. 409, 458, 459, and 380 of 1992 and I have heard Mr. Amal Kumar Ray learned Standing Counsel (Income Tax) in each of these cases separately.

4. In Original Application No. 424 of 1992 an adjournment was sought for on behalf of Mr. P. Nayak learned Counsel appearing for the petitioner which I had refused because similar questions of fact and law are involved in all these cases mentioned above. I have heard Mr. A.K. Ray learned standing counsel (Income Tax) appearing for the Opposite Parties in this case.

5. In Original Application No. 486 of 1992 I have heard Mr. D.N. Misra learned counsel appearing for the Petitioner and Mr. A.K. Ray learned Standing Counsel (Income tax) appearing for the Opposite Parties in this case.

6. Though I have heard each of these cases separately one after the other, it is directed that this common judgment will govern all these cases mentioned above.

7. At the out set, I must say that I would refrain myself from expressing any opinion in regard to violation of the guidelines issued by the Central Board of Direct Taxes, Keeping in view the guidelines, issued by the Commissioner of Income Tax, Orissa

contained in Annexure 3 in Original Application



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No. 409 of 1992 because of the order I propose to pass in all these cases.

8. The law relating to transfer of a particular Government servant has been well settled in a recent judgment of the Hon'ble Supreme Court reported in AIR 1991 SC 532 (Ms. Shilpi Bose ~~Vnd.~~ State of Bihar and others). In that case, Their Lordships have been pleased to hold that an order of transfer can be quashed only when there is violation of mandatory, statutory rules or such transfer order has resulted from mala fide or bias. In case certain administrative instructions have been violated, then the affected party should move his higher authorities instead of court's interference with the day to day transfer orders passed by the competent authority. In all these cases, there is absolutely no allegation of violation of statutory mandatory rules except violation of guidelines as stated above. The guidelines issued by the Government may at best <sup>amount</sup> mean <sup>to</sup> administrative <sup>instructions</sup> exigencies. They cannot be categorised as Statutory mandatory rules. In neither of these cases there is any allegation of mala fide. Therefore, applying to the principles laid down by Their Lordships in the case of Ms. Shilpi Bose (Supra), I do not find any justifiable reason to quash the impugned orders of transfer of the petitioners in all these cases. I do accept the arguments advanced at <sup>the</sup> Bar that the petitioners seek leave of this Court to move the Commissioner once

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again to reconsider the matter keeping in view that such order of transfer has resulted from Union rivalry. I do not know whether actually the impugned orders of transfer had resulted from rivalry between the different Unions.

<sup>That</sup> There is no concern of the judiciary. Be that as it may, I would leave this matter, to be reconsidered by the Commissioner of the Income Tax Department, Orissa and pass necessary orders according to law as he deems fit and proper. One thing, I would like to make it clear that the dismissal of these applications will have no effect over the commissioner if he reconsiders the matter and reach ~~in~~ a conclusion in favour of the petitioners in all these cases.

9. It was told to me that transfer in this Mid session will seriously tell upon the education of the children of the petitioners and being employees of the Government, as a model employer, it is the duty of the Government to look to the convenience of the petitioners and especially their children, In case the Commissioner of Income Tax Department does not feel inclined to reconsider the matter in favour of the petitioners in all these cases, <sup>to</sup> recalling the orders of transfer, then he may consider the feasibility and justifiability of deferring the orders of transfer till the end of academic session of the current year.

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10. It was submitted by Mr. Swamy learned counsel for the petitioners that before coming up with these applications to this Bench, the petitioners had availed leave soon after receipt of the transfer order and they have not been paid their emoluments for the leave period. The Commissioner may also consider this aspect and pass necessary orders according to law.

11. Thus, all these applications are accordingly disposed of leaving the parties to bear their own costs.



*K. Mohanty*  
2.2.1993  
.....  
VICE CHAIRMAN

Central Administrative Tribunal,  
Cuttack Bench, Cuttack/2.2.1993/  
K. Mohanty.