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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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Original Application No. 426 of 1992

Date of Decision: 16. 9. 1992

Prasanna Kumar Parida

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s.Devanand Mishra
Deepak Mishra
R.N.Naik, A.Deo
B.S.Tripathy,
P.Panda,
Advocates

For the respondents No.1

Mr. Umaballava Mohapatra
Addl.Standing Counsel

For the respondents No.2&3

Mr. K.C.Mohanty,
Government Advocate
(State of Orissa)

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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 newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ? ☒
3. Whether His Lordships wishes to see the fair copy of the judgment ? Yes

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JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the impugned order of transfer contained in Annexure-2 dated 23.6.1992 transferring the petitioner from Berhampur to Bhubaneswar.

2. I have heard Mr. Deepak Mishra, learned counsel for the petitioner and Mr. K.C. Mohanty, learned Government Advocate for the State of Orissa and Mr. U.B. Mohapatra, learned Additional Standing Counsel for the Central Government.

3. Mr. Deepak Mishra, learned counsel for the petitioner did not rightly press any of the points urged in the application except it was submitted on behalf of the petitioner ~~is~~ that by the end of December, 1992 the petitioner will definitely handover charge of the post of Conservator at Berhampur and would take over charge in the new place of posting.

4. The petitioner had filed an application under Section 19 of the Administrative Tribunals Act 1995 to quash the order of transfer which formed subject matter of O.A. No. 313 of 1992. This case was disposed of on 20.7.1992 and it was dismissed owing to the principles laid down by Their Lordships of the Supreme Court in the case of Mrs. Shilpi Bose and others vs. State of Bihar and others reported in AIR 1991 SC 532. The petitioner then prayed to make a representation to the Government because certain administrative instructions have been violated.

5. I was not at all inclined to accede to the prayer of the petitioner to quash the impugned order of transfer
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because there was no new changed circumstances which would entitle the petitioner to claim the relief as stated above. Hence lastly Mr. Deepak Mishra submitted that the studies of the children of the petitioner ^{will} be seriously hampered because in the month of September, it would be utterly difficult on the part of the petitioner to get his children admitted and hence the petitioner be allowed to stay at Berhampur for the education of his children till the end of December, 1992. I had requested learned Government Advocate Mr. K.C. Mohanty to take instructions from the Secretary, Forest Department as to whether there is any objection for allowing the petitioner to stay at Berhampur till the end of December, 1992. No doubt the Government has the right to transfer a particular officer for exigency of services at any point of time, but at the same time observations made by Their Lordships of the Supreme Court in the case of B.B. Varadharao vs. State of Karnataka reported in AIR 1986 SC 1955 cannot go unnoticed. 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 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." x x x x

The present petitioner has completed just one year service at Berhampur. In the impugned order of transfer nothing has been mentioned that such transfer is in the public interest or for exigency of service. It is a general

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order of transfer. Academic session has already commenced. There may be some difficulty for the admission of the children of the petitioner. Learned Government Advocate for the State of Orissa Mr.K.C.Mohanty contended that the delay in departure from Berhampur is on account of the petitioner who have moved this Bench for quashing the order of transfer and had filed a representation before the Government to reconsider the order of transfer. Being aggrieved by the order or transfer the petitioner has a right to ventilate his grievance before the Court and before the Government, least expecting that it may be turned down. Therefore it is unreasonable to throw the blame on the shoulders of the petitioner. Be that as it may, educational facilities of the children is of paramount consideration for the parent and departure from Berhampur at this stage may uproot the family and cause irreparable harm to the petitioner driving him to desperation. The observations of Their Lordships of the Supreme Court in the case of B.B.Varadharao applies in full force to the facts of the present case. Besides a general statement, nothing was indicated as to how the administration will suffer if the petitioner is allowed to continue at Berhampur for a couple of months more.

6. In such circumstances it is directed that the impugned order of transfer contained in Annexure-2 dated 23.6.1992 ^{is} kept in abeyance till 24.12.1992 and it is further directed that the petitioner will ^{be} handover charge of his present office of Conservator of Forests in the after-noon of 24.12.1992 and would take over charge of

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his new place of posting at Bhubaneswar within permissible time as per rules. In case the petitioner does not hand over charge by the date stipulated above, he would have to face the consequence of law for having violated the orders of this Bench.

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



B.K. Sahoo
16-9-92
VICE-CHAIRMAN