

5

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 428 of 1992

Date of Decision: 25.2.1993

P.S.N. Murty

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s. A.K. Mishra,
S.K. Das,
S.B. Jena,
Advocates

For the respondents

Mr. D.N. Mishra,
Standing Counsel
(Rly. Administration)

...

C O R A M:

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

...

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

...

6
JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN, In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash Annexure-1 dated 10.7.1992 transferring the petitioner from Khurda ^{Road} to Jharsuguda.

2. Shortly stated the case of the petitioner is that while he was working as a Teacher in the Railway School at Khurda Road, he has been transferred to Jharsuguda in the same capacity. Hence this application has been filed with the aforesaid prayer.

3. In their counter the opposite parties maintain that the transfer being ^{for} the public interest and in the exigency of service should not be interfered with-rather it should be sustained.

4. I have heard Mr. A. K. Mishra, learned counsel for the petitioner and Mr. D. N. Mishra, learned Standing Counsel on the merits of the case.

5. Mr. A. K. Mishra submitted that the transfer amounts to punishment, because it is understood that the petitioner has been transferred to Jharsuguda on receipt of certain allegations from his co-employees which are baseless, imaginary and such allegations are made by the co-employees out of grudge and with a ^a revengeful attitude and without an enquiry having been made in this regard the transfer amounts to punishment which is not recognised under the law and hence should not be sustained. The next contention of Mr. Mishra was that the Government has been issuing circulars from time to time laying down that the husband and wife should be posted in the same station as far as possible. In this connection it was submitted by Mr. Mishra that Mrs. Murty is also a teacher in the same school and both Mr. and Mrs. Murty have school going children and transfer of the petitioner in the mid-academic session would considerably jeopardise the interest
VM

of his children. Last contention of Mr. Mishra was that though the petitioner is a Science Teacher, yet he has been posted to the Arts section which is against all norms and conditions of service imposed in the initial appointment order and it also changes the condition of service. Therefore it was urged by Mr. Mishra that the order of transfer should be quashed.

6. On the other hand Mr. D. N. Mishra, learned Standing Counsel strenuously urged before me that in view of the law laid down in the case of Mrs. Shilpi Bose and others vs. State of Bihar and others reported in AIR 1991 Supreme Court 532, in the absence of violation of mandatory, statutory rules and in the absence of any case put forward by the petitioner that the transfer has resulted from malafide or bias, Court should not interfere. It was further submitted by Mr. D. N. Mishra that the contentions put forward by the learned counsel for the petitioner would at best come within the purview of violation of administrative instructions and Their Lordships of the Supreme Court have been pleased to observe in the case of Mrs. Shilpi Bose that in case there is violation of any administrative instructions, the affected party should move the higher authority instead of interference by the Court. In a crux the argument of Mr. D. N. Mishra boils down to the fact that Court should not unsettle the impugned order in view of the dictum laid down by Their Lordships in the case of Mrs. Shilpi Bose (Supra).

7. I have given my anxious consideration to the argument advanced at the Bar. Undisputedly there are circulars issued by the Government of India stating that as far as possible, husband and wife should be posted in the same station. Employer has a duty towards the employee to see that the employee is provided with the minimum amenities and convenience (as far as possible) so

that he would render service with sincerity and with devotion to duty which would be more beneficial to the Government. But I am unable to give any directions in view of the submission made by Mr.D.N.Mishra and very rightly that the adjudication of these matters lies within the province of the administrative authority. Therefore, Mr.A.K.Mishra submitted that his client intends to file a representation before the higher authority and necessary directions be given to the higher authority to consider the same and dispose of accordingly.

8. In the circumstances stated above, I have no objection if a representation is made by the petitioner within 15 days from to-day addressed to the concerned authority and the concerned authority should dispose of the representation within 90 days from the date of receipt of the representation, preferably by 15.5.1993 and till then the order of transfer shall remain in abeyance. The final order passed by the competent authority would govern the field. It is further directed that the allegations levelled against the petitioner by the co-employees(if at all it is true) and correct) should not weigh with the concerned authority while applying his mind to the representation for disposal according to law.

9. In view of the stay order passed by this Bench, the emoluments to which the petitioner is entitled for the period during which he has not received the pay, be paid to the petitioner within

10 days from the date of receipt of a copy of this judgment.

10. Thus the application is accordingly disposed of leaving the parties to bear their own cost.

Ke, a/s/
25/2/93
VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
dated the 25.2.1993/ B.K. Sahoo

