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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No. 97/of 1992

Date of Decision 19.5.1992

Pabitra Kumar Chakraborty

Petitioner

Versus

Union of India & Others

Opp. Parties

For the applicant

M/s. Ganeswar Rath  
P. K. Mohapatra,  
A. K. Patnaik  
A. Mohanty  
C. S. Lakshmanan,  
Advocates

For the respondents

Mr. Ashok Mohanty  
Sr. Standing Counsel  
(Central Government)

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C O R A M

HON'BLE 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 Shri P.K. Chakraborty prays for a direction to the N.C.C. Directorate, Orissa, Bhubaneswar to relieve the petitioner in compliance with the order passed by the Directorate General, N.C.C., New Delhi dated 3.3.1992 contained in Annexure-1 transferring the petitioner Shri P.K. Chakraborty from the N.C.C. Directorate Bhubaneswar to N.C.C. Directorate, West Bengal.

2. This case had come up for hearing on 8.5.1992 and on the same day judgment was delivered, dictated and pronounced in the Open Court giving appropriate directions to the N.C.C. Directorate, Bhubaneswar to relieve the petitioner from the said office immediately on receipt of a copy of the judgment. there  
Soon/after a review application was filed by the Union of India and others praying to cancel the judgment on the ground that OP No.1 i.e. Directorate General, Ministry of Defence, New Delhi had not received the notice issued to him after admission of this case and therefore the Directorate General not having been heard in the matter, the judgment should be cancelled and the matter should be re-heard. This formed subject matter of R.A. No.5/92. The said Review Application was heard dated on 11.5.1992 and vide order/11.5.1992 the judgment dated 8.4.1992 passed in O.A. 97/92 was cancelled and said original application was ordered to be re-heard. In these circumstances the said original application has come up for hearing to-day. Misc. Application No.184/92 has been filed on behalf of the Opposite parties in the said original application praying to

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stay operation of the judgment passed in Original Application No. 97/92. This Misc. application was heard along with O.A. 97/92 -and this common judgment will govern both the cases.

3. In their counter the opposite parties maintain that the petitioner was transferred to Bhubaneswar in his own interest as he had some altercation with some of his colleagues and therefore to have a peaceful atmosphere in the office and for the person concerned, the petitioner was transferred to Bhubaneswar who never wanted a transfer to Calcutta, but to Bihar. After receipt of the transfer order, the N.C.C. Directorate at Calcutta invited the attention of the Directorate General, New Delhi stating that there was no post available in the Calcutta Directorate and therefore it is difficult to accommodate the petitioner Shri Chakraborty at Calcutta and therefore the matter having been placed before the Directorate General for his re-consideration, the petitioner Shri Chakraborty has not been relieved and since the matter is still under the consideration of the Directorate General, the application of the petitioner is liable to be dismissed in limine with cost.

4. I have heard Mr. Ganeswar Rath, learned counsel for the petitioner and Mr. Ashok Mohanty, learned Sr. Standing Counsel appearing for the opposite parties at a considerable length.

5. Mr. Rath urged several points to substantiate his contention that gross injustice is being done to the petitioner in not relieving him from the Bhubaneswar Directorate which should have been done giving due respect to the orders passed

by the Directorate

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by the Directorate General. Mr. Rath further submitted that the Directorate General has always ~~been~~ taken a very sympathetic, ~~and~~ considerate and compassionate view over the the petitioner while transferring him from Delhi to Bhubaneswar along with the post and so also the Directorate General was extremely kind and compassionate to the petitioner while ordering that the petitioner Shri Chakraborty <sup>be</sup> ~~is~~ posted at Calcutta against the sanctioned post of Administrative Officer(CIV) at N.C.C. Directorate, Chandigarh thereby impliedly meaning that the post at Chandigarh has been transferred to Calcutta. Therefore it is futile on the part of the opposite parties to contend that there is no sanctioned post at Calcutta to accommodate the petitioner.

6. On the other hand it was submitted by Mr. Ashok Mohanty, learned Sr. Standing Counsel that the entire matter relating to the transfer of the petitioner from Bhubaneswar to Calcutta is under the consideration of the Directorate General and since a submission is made on behalf of the petitioner that the Directorate General has been consistently taking a sympathetic view over the petitioner, in all fitness of things the matter should be left to the Directorate General to decide the issue at hand instead of seeking interference by the Court. It is further more submitted by Mr. Mohanty, learned Sr. Standing Counsel that vide order dated 3.4.1992, the Directorate General has ordered ~~a~~ transfer of the petitioner from Bhubaneswar to Calcutta to be kept in abeyance till ~~a~~ final decision has been taken. This decision ~~presupposes~~ that the issue at hand is

under the active consideration of the Directorate General.

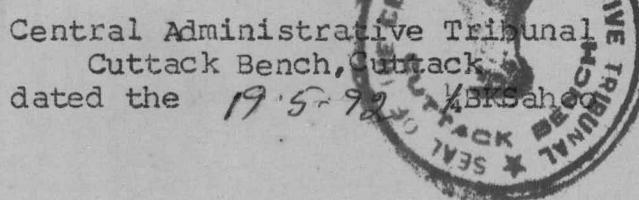
7. I have given my anxious consideration to the argument advanced at the bar and I feel that the submission made by Mr. Mohanty has a substantial force and from prudential point of view the matter should be left entirely to the Directorate General to take a decision as soon as possible. I must place on record that the Directorate General has not only been but solving the problems of his own office at Delhi /admittedly, he has been decking into the interest of his employee which would be glaringly apparent from the order passed by him transferring the petitioner from New Delhi to Bhubaneswar so much so the post was also transferred from New Delhi to Bhubaneswar. The contention of Mr. Rath about the sympathetic and kind attitude of the Directorate General will also be borne out from Annexure-1 wherein it has been stated that the petitioner has been posted against the sanctioned post at Chandigarh. Perhaps this order was passed by the Directorate General keeping in view that the petitioner would retire on superannuation very shortly and that the petitioner belongs to Calcutta who should be given an opportunity to remain in his home town in the last part of his service career which is in accordance with the guidelines issued by the Government of India from time to time. In these circumstances I would refrain myself from passing any specific orders on the application of the petitioner and I would further more leave the entire matter to the Directorate General to take a decision keeping in view the past sympathetic attitude taken over the petitioner which normally an employer is expected

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to extend to his employee. I hope and trust that the Directorate General would not feel reluctant to extend the same sympathetic attitude to the petitioner at the fag end of his service. I equally hope and trust that the Directorate General will take a final decision at his earliest convenience preferably within thirty days from the date of receipt of a copy of this judgment. Thus the Original Application No.97/92 is accordingly disposed of leaving the parties to bear their own cost.

3. As regards Misc. Application No.184/92, prayer of the opposite parties in original application to stay operation of the judgment dated 8.4.1992, I may say that such a question does not arise, because the judgment has already been cancelled while disposing of Review Application No.5/92 and in view of the fact that a fresh judgment in O.A. 97/92 has been passed to-day and the original application having been finally disposed of to-day, no further order is required to be passed in the said Misc. application and hence Misc. application is accordingly disposed of. Parties to bear their own costs.

*Garib Singh*  
19.5.92  
VICE-CHAIRMAN



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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 97 OF 1992

Date of decision : 8th April, 1992

Pabitra Kumar Chakraborty .. Petitioner

Versus

Union of India and others .. Opp. Parties

For the applicant : M/s. Ganeswar Rath,  
P.K.Mohapatra,  
A.K.Patnaik,  
A.Mohanty,  
C.S.Lakshmanan,  
Advocates.

For the respondents : Mr. A.Mohanty, Sr. St. Counsel.

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CORAM:

THE HONOURABLE MR. K.P. ACHARAKA, VICE CHAIRMAN

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1. Whether 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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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 97 OF 1992.

Date of decision: April, 8, 1992.

Pabitra Kumar Chakraborty .. Petitioner

-Versus-

Union of India and another .. Opp. Parties.

For the applicant .... M/s Ganeswar Rath,  
P.K.Mohapatra,  
A.K.Platnaik,  
A.Mohanty  
C.S.Lakshmanan,  
Advocates.

For the Respondents .... Mr. Ashok Mohanty, Sr. Standing  
Counsel (Central).

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C O R A M:

THE HONOURABLE MR. K.P.ACHARAYA, VICE CHAIRMAN

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J U D G M E N T

K.P.ACHARAYA, V.C. In this application under section 19 of the  
Administrative Tribunals Act, 1985, the Petitioner prays that  
a direction be issued to the N.C.C. Directorate, Orissa, Bhuban-  
swar to relieve the Petitioner in accordance with Annexure-1.

2. After hearing Mr. Ganeswar Rath learned Counsel  
appearing for the Petitioner and Mr. Ashok Mohanty learned Sr.  
Standing Counsel appearing for the Opposite Parties the following

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order is passed. Vide Annexure-1, the Director General N.C.C. passed an order transferring the Petitioner Shri Pabitra Kumar Chakraborty from Bhubaneswar to the NCC Directorate, Calcutta. This order is dated 3rd March, 1992. In furtherance thereof the Petitioner handed over ~~the~~ charge to the Accounts Officer of the same establishment on 17th March, 1992 which forms subject matter of the case record, as per the document filed today by Mr. Ganeswar Rath. In the meanwhile vide Annexure-2, NCC Directorate, Calcutta asked the NCC Directorate Bhubaneswar not to despatch Shri P.K. Chakraborty as if Shri Chakraborty was a commodity coming within the category of 'goods' to be despatched. From the word 'despatch' <sup>it seems</sup> ~~on the contrary~~ that the NCC Directorate Calcutta meant that the Petitioner Shri Chakraborty should not be relieved. I cannot <sup>comprehend</sup> ~~apprehend~~ as to what authority the NCC Directorate Calcutta had to issue such a direction especially in view ~~of~~ <sup>in</sup> the fact that the Director General had passed the transfer order. It was within the competency of the Director General to pass further orders to stay operation of his own orders. In absence of such an order issued by the Director General, I am of opinion that the aforesaid request made by the NCC Directorate Calcutta should not be acted upon. Keeping inview that the transfer order (Annexure-1) being inforce and the Petitioner having handed over charge on 17th March, 1992, the Petitioner should be relieved from the said Office immediately on receipt of a copy of this judgment which should be sent through a special messenger to be delivered to Opposite Party No.2.

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

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4. A copy of the order passed today be also annexed to the copy of the judgment to be sent through the special messenger. A copy of the judgment be delivered to Mr. Ganeswar Rath learned Counsel for the Petitioner and Mr. Ashok Mohanty learned Senior Standing Counsel so that it would be deemed to be service on the parties.

*K. Mohanty*  
8/4/92  
VICE CHAIRMAN

Central Admn. Tribunal,  
Cuttack Bench/K.Mohanty  
8.4.92

