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Original Application No.175 of 1993

Date of decision: May 10, 1993.

Shri Bijay Kumar Das Applicant
Versus
Union of India and Others Respondents

For the Applicant ... M/s. A.K.Bose, P.K.Giri,
A.K.Panda, Advocates

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

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C O R A M:

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

END END TWO

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not? *N*
3. Whether His Lordship wish to see the fair copy of the judgment? Yes.

[illegible]

J U D G M E N T

K.P.ACHARYA, V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order passed by the competent authority transferring the petitioner from Paradeep to Cuttack.

2. The Petitioner is working in the cadre of regular Mazdoor in the microwave maintenance Centre (Telecommunication Department) stationed at Paradip. Vide order dated 15th October, 1992, contained in Annexure 1, the petitioner has been transferred to Cuttack. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that since the petitioner joined his services he has been stationed at Paradip with effect from 1989, the transfer has been made on administrative ground as there is no post to adjust the petitioner ^{at Paradeep}. Further more it is maintained by the opposite parties that the petitioner has been committed certain overacts for which his continuance at Paradip is against

his own interest. Hence it is maintained by the Opposite Parties that the case being devoid of merit is liable to be dismissed.

4. I have heard Mr. A.K. Bose learned counsel appearing for the petitioner and Mr. Ashok Misra, learned Senior Standing Counsel (Central) for the Opposite Parties.

5. Law is well settled that an order of transfer can be quashed only on the ground of mala fide and/or violation of statutory mandatory rules vide judgment reported in AIR 1991 SC 532 (Mrs. Shippi Bose Vs. State of Bihar and others). In the present case there is nothing to be said by the Petitioner that there has been violation of statutory mandatory rules. Mr. Bose learned counsel appearing for the petitioner strenuously urged before me that since the petitioner had made certain allegations against the Junior Engineer for misutilising/misusing the micro^{wave} system in allowing outsiders to talk with their friends staying overseas without any charges and the petitioner having raised

objections to ^{this} these procedure being adopted, he has been transferred. This submission made on behalf of the petitioner is only a bald allegation without any proof. Since there ~~is~~ no proof, of this fact, stated above, I cannot hold that the transfer has resulted from any mala fide motives. However, since the petitioner had made these allegations in writing to his authorities, the Chief General Manager, Telecommunication would be well advised to effect a preliminary enquiry and if these facts are found to be true, then he should proceed against the offender. If these allegations made by the petitioner ^{are} ~~is~~ found to be untrue, he should be equally proceeded against ~~the petitioner~~ ^{by} for having made false statement against his higher authorities. I leave it to the Chief General Manager, Telecommunication to do the needful as soon as possible.

6. As regards, the contention put forwarded by Mr. Bose learned Counsel appearing for the petitioner that the transfer of the petitioner on the basis of these allegations amounts to a punishment and therefore, it should be quashed, ^{I would say that} ~~True it is,~~ the Division Bench while deciding the case of K.K. Jindal Vs. General

Manager, Northern Railway and others reported in ATR 1986 CAT 304 had laid down that the transfer made on the basis of certain allegations amounts to punishment but such observations of the Division Bench was modified by a Larger Bench in the case of Shri Kamelsh Trivedi Vs. Indian Council of Agricultural and Research and another reported in ATR 1988(2) CAT 116 and the modified view taken by the Full Bench has fullest application to the facts of the present case. In the case of Dr. A.K. Mohapatra Vs. Union of India and others (O.A. No. 497 of 1991 disposed of on March 31, 1992) I have held that the observations made by the Full Bench modifying these ^{principles laid down} ~~propounded~~ by the Division Bench have fullest application and therefore, the allegations levelled against Dr. Mohapatra cannot be construed to be the basis for being transferred to a place (within the Bihar State). I do not find any justifiable reason to make a departure from the view already taken in O.A. No. 497 of 1991. Therefore, I find no merit in the aforesaid contention of Mr. Bose learned counsel for the petitioner.

7. Apart from the above, the distance between Paradip and Cuttack is about 80 K.Ms. In the circumstances stated above, I find no reason to quash the transfer order which is hereby sustained. Mr. Bose learned Counsel appearing for the petitioner further submitted to me that the petitioner being a Class IV employee is bound to take some time to windup the establishment after receipt^{of} his pay on 31st May, 1993. Therefore, the petitioner be given an opportunity to draw his pay on 31st May, 1993 and thereafter he may move from Paradip. Of course the submission made by Mr. Bose was objected by Mr. Ashok Misra. But I cannot close my eyes to the fact that the petitioner is a class IV employee who must have been living from hand to mouth and he has to wind up his establishment after receiving his pay and perhaps he may repay to some people. Therefore in the peculiar facts and circumstances, I would direct that the transfer order be kept in abeyance till 4th June, 1993 and the petitioner may hand over charge in the afternoon of 4th June, 1993 and take over charge at Cuttack after availing the transit leave according to rules.

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

9. A copy of this judgment^{be} sent to the Chief General Manager, Telecommunication in his name cover for necessary action as indicated in this judgment.


10.5.93
VICE CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K.Mohanty
10.5.93

