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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 244 OF 1993

Date of decision: July 15, 1993

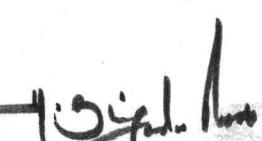
Shri K.D.P. Singh ... Applicant

-Versus-

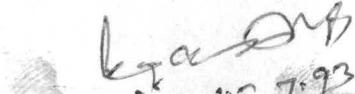
Union of India and others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not?


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

15.7.93


(K.P. ACHARYA)
VICE- CHAIRMAN

15.7.93

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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Date of decision: July , 1993

Shri K.D.P. Singh ... Applicant

-Versus-

Union of India and others ... Respondents

For the Applicant : M/s. Ganeswar Rath,
P.K. Mohapatra,
A.K. Patnaik,
J.C. Sahoo,
Advocates.

For the Respondents : Mr. Uma Ballav Mohapatra,
Additional Standing Counsel,
(Central)

CORAM:

THE HONOURABLE MR. K.P. ACHARYA, VICE CHAIRMAN
A N D

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

JUDGMENT

K.P. ACHARYA, V.C.

In this Application under section 19 of the
Administrative Tribunals Act, 1986, the petitioner
prays to quash the order of transfer contained in
Annexure-2.

2. Shortly stated, the case of the petitioner is
that ~~vide~~ order dated 26th April, 1993, contained in
Annexure 2, the petitioner Shri K.D.P. Singh has been
transferred from Aviation Research Centre, Charibatia
to Dooma Dooma. Hence this application has been filed
with a prayer to quash the same.

3. In their counter, the Opposite Parties maintained that the order of transfer is in the interest of administration which should not be quashed - rather it should be sustained.

4. We have heard Mr. Ganeswar Rath learned counsel for the petitioner and Mr. Uma Ballav Mohapatra learned Additional Standing Counsel (Central).

5. It was submitted by Mr. Ganeswar Rath that the petitioner had claimed seniority over Shri S. Gangadharan and vide judgment dated 20th January, 1993, passed in Original Application No. 505 of 1991 contained in Annexure 1, the Bench had directed for consideration of the case of the petitioner, Shri K.D.P. Singh, for promotion to the next higher post with effect from the date on which his Junior, Shri Gangadharan, had been promoted. Without implementing the said judgment, the authorities with a vindictive motive has transferred the petitioner to Doon Dooma creating a great embarrassment for the petitioner to serve under his junior who would record the performance of the petitioner in his Confidential Character Roll. Therefore, it was urged by Mr. Rath learned counsel for the petitioner that the order of transfer should be quashed.

6. In the case of M/s Shilpi Bose and others vs. State of Bihar and Others reported in AIR 1991 SC 532 Their Lordships of the Hon'ble Supreme Court were pleased to hold that the transfer order can be quashed

only when the transfer order has resulted ~~on~~ ^{from} malafide or there is any violation of statutory mandatory rules. Mr. Rath, learned counsel appearing for the petitioner, wants to bring this case within the purview of the mala fide. After hearing learned counsel for both sides, we are of opinion that there is no mala fide in this case, because ~~of~~ the specific statement made by Mr. Uma Ballav Mohapatra learned Additional Standing Counsel (Central) which has been recorded in the order sheet dated 9th July, 1993, relying on the xerox copy of the order dated 21st September, 1992, passed by the Joint Director, ARC., Cabinet Secretariat, ordering that the seniority list has been revised placing Shri Singh as senior to Shri Gangadharan. Mr. Mohapatra, learned Addl. Standing Counsel, and Mr. Mishra, the officer representing from ARC Charbatia stated before us that Shri K.D.P. Singh will not work at Doam Doama as a subordinate to Shri Gangadharan because ~~both~~ ^{wings} of them will discharge their duties in two different ~~grades~~ ^{by} and both Mr. Mohapatra and Mr. Mishra assured us that Shri Gangadharan had no authority to record the performance of the petitioner Shri K.D.P. Singh in his Confidential Character Roll. Taking into consideration of the statement made by the learned Additional Standing Counsel Mr. Mohapatra on instruction we ~~w~~ find no merit in the aforesaid contention of Mr. Rath.

7. It was next urged by Mr. Rath that the petitioner would shortly retire and the Govt. of India in different circulars contained as Annexures ^{to} in this petition laid down that such an employee should be posted in his home state as far as possible. On that account the transfer order should be quashed. The aforesaid argument of Mr. Rath may amount to violation of administrative instructions. Their Lordships in the case of Ms. Shilpi Bose (supra) have held that in case there is violation of Administrative instructions the affected party should move his higher authority. We give liberty to the petitioner to move his higher authority, if ^{he} so chooses, by filing a representation who would duly consider the case and pass orders according to rules. We do not feel inclined to interfere with the impugned order of transfer. The case being devoid of merit stands dismissed. No costs.

Agreed Agreed
MEMBER (ADMINISTRATIVE)

15/7/93

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K. Mohanty/
July 15, 1993.

Agreed Agreed
VICE-CHAIRMAN

15/7/93

