

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No. 30 of 1993.

Date of decision : April 19, 1993.

Paramananda Baral ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s. A. Routray,
S. Mohanty,
D. Lenka, Advocates.

For the respondents ... **Mr. Ashok Kumar Misra,
Sr. Standing Counsel
(Central)**

C O R A M:

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

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

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JUDGMENT

K.P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the order passed by the competent authority transferring the applicant from Cuttack to Rayagada as contained in Annexure-4 dated 20.1.1993.

2. Shortly stated, the case of the applicant is that he is a Class IV employee in the Small Industries Service Institute, Workshop at Cuttack and he has been transferred to Rayagada Branch by Respondent No. 2, i.e. Director, Small Industries Service Institute, College Square, Cuttack.

3. The grievance of the applicant is that his wife Smt. Sunadevi Baral is being regularly treated in the outdoor of S.C.B. Medical College & Hospital, at Cuttack as psychiatric patient having some derangement of mental action. According to the applicant, his transfer to Rayagada may ultimately result in the acceleration of the disease for which his wife is suffering and it may also become fatal for the wife of the applicant especially because there is no adequate treatment facility at Rayagada. Hence, the impugned order of transfer is sought to be quashed.

4. In their counter, the respondents maintained that one Ram Bahadur who was appointed on compassionate grounds had been posted at Rayagada. After the death of his father and some time later his mother having expired, the younger brother of the said Ram Bahadur

having become orphan, Ram Bahadur made a representation to Assistant Director, S.I.S.I., Rayagada for his transfer to Cuttack and this has ultimately been allowed. Therefore, it is maintained by the respondents that the case being devoid of merit is liable to be dismissed.

5. I have heard Mr.A.Routray, learned counsel for the applicant and Mr.Ashok Kumar Misra, learned Sr. Standing Counsel(Central) for the respondents. In the case of Mrs.Shilpi Bose and others vrs. State of Bihar and others, reported in AIR 1991 SC 532, Their Lordships of the Supreme Court have been pleased to observe that the transfer order cannot be quashed unless and until there is a case of malafide or violation of mandatory statutory Rules. In the present case, there is no question of violation of mandatory statutory rules and there is no pleading alleging any malafide against the respondent No.2. The only ground on which Mr.Routray prayed for quashing of the transfer order is that the applicant's wife has been an acute psychiatric patient and her treatment at Rayagada will not be adequate to cure her and in support of his contention Mr.Routray relied upon the prescriptions contained in Annexure-1 and certificate granted by Prof. and Head of the Department of Mental Health Institute, S.C.B. Medical College & Hospital, Cuttack at Annexure-2 and he also relied upon certain prescriptions dated 13.4.1992 and medicines purchased on 30.1.1993, 14.1.1993. On the other hand, it was contended by Mr.Ashok Misra that these are matters to be taken into consideration

by the administrative authority. The applicant not having made any representation to Respondent No.2, soon after the transfer order was received by him and Respondent No.2 not having considered all these aspects, the applicant should have moved the Respondent No.2 instead of rushing to the Court. I think there is substantial force in the contention of Mr. Ashok Mishra. Therefore, it is directed that the applicant would submit a representation ^{to the competent authority} along with documentary evidence to support his case that his wife is suffering from mental derangement and medicines are being administered on her by treating physician of S.C.B. Medical College & Hospital, Cuttack. The representation should be filed within 15(fifteen) days from today and Respondent No.2 would consider the representation and pass a reasoned order according to law within a month from the date of filing of the representation. Liberty is given to the applicant to approach the Bench if he receives an adverse order. The operation of transfer order contained in Annexure-4(so far as it relates to the applicant) is hereby stayed till 31st May, 1993 and it is hoped that Respondent No.2 would pass a reasoned order according to law within the date fixed.

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

Lal *OMS*
19.4.93
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Vice-Chairman

Central Admn. Tribunal,
Cuttack Bench, Cuttack.
April 19, 1993/Sarangi.