

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.356 of 1993

Santosh Kumar Biswal

....

Applicant

Versus

Union of India & Others

....

Respondents

O.A.No.355 of 1993

Amaresh Kumar Biswal

....

Applicant

Versus

Union of India and others

....

Respondents

O.A.No.396 of 1993

P.R.Singh

....

Applicant

Versus

Union of India & Others

....

Respondents

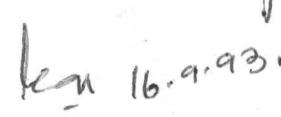
Date of decision: September 16, 1993

(For Instructions)

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


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

16 SEP 93


(K.P. ACHARYA)
VICE-CHAIRMAN

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Santosh Kumar Biswal

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Versus

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Respondents

Amaresh Kumar Jeyswal

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Versus

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Respondents

P.R. Singh

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Applicant

Versus

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Respondents

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

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M/s. B.M. Patnaik, A. Patnaik
and S. Mohanty, Advocates

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Mr. U. B. Mohapatra, Addl.
Standing Counsel (Central).

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Mr. K. C. Mohanty,
Government Advocate
(For the State of Orissa)

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Mr. R. K. Mohapatra & Mr. S. K. Swain
Advocates.

C O R A M:

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

AND

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

J U D G M E N T

K. P. ACHARYA, V. C.

All the above mentioned cases were heard one after the other and since all the three cases involve transfer of officers from one station to other of the

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same Department, we thought it just and expedient, in the interest of justice, to dispose of these three cases by a common judgment. Hence this common order will govern all these cases mentioned above.

2. In all these three Original Applications, the petitioners are Members of the Indian Forest Service. In Original Application No. 355 of 1993, petitioner has been transferred from Karanjia and in Original Application No. 356 of 1993, petitioner has been transferred from Keonjhar to Athamalik and in Original Application No. 396 of 1993, petitioner has been transferred from Deogarh to Koraput. All these transfer orders are under challenge and sought to be quashed. Before we express our opinion on the merits of each of these cases, it is worthwhile to note that that in the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others reported in AIR 1991 SC 532, in the case of Union of India Vs. S.L. Abbas reported in Judgment Today 1993 (3), 678 and in the latest judgment reported in AIR 1993 SC 1236 (Rajendra Ray Vs. Union of India and others) Their Lordships have consistently laid down that an order of transfer could be interfered with by Courts only when it has resulted from mala fide or violation of mandatory statutory rules. In the case of Mrs. Shilpi Bose (supra) Their Lordships have observed that in case there is violation of any administrative instructions, affected party should move his higher authority instead of interference

by the Courts. All these questions of law determined by Their Lordships in the above mentioned judgments have not been unsettled as yet.

3. In Original Application No.355 of 1993, we have heard Mr. Aswini Kumar Misra learned counsel for the petitioner, Mr. K.C. Mohanty learned Government Advocate appearing for the State of Orissa and Mr. Uma Ballav Mohapatra learned Additional Standing Counsel (Central). Mr. Aswini Kumar Misra learned counsel appearing for the Petitioner strenuously urged before us that though in the transfer order dated 13th July, 1993, contained in Annexure I, the petitioner has been transferred from Karanjia, & his services has been placed under the Orissa Forest Development Corporation, no posting order having been received by the petitioner, it should not be insisted upon him to get himself relieved from Karanjia and join his new place of posting. We are unable to accept the aforesaid submission of Mr. Misra learned counsel for the petitioner because once the petitioner is relieved from his place of posting at Karanjia he has to report to the authority of the Corporation to receive a posting order, and we do not find this to be an adequate ground to accept the prayer of the petitioner. that the transfer order should be quashed. It was next urged by Mr. Misra that the petitioner in this original application has been posted at Karanjia on 23rd June, 1992

and he has been transferred on 13th July, 1993. This is in clear violation of the administrative instructions issued by the Government of Orissa contained in Annexure 2 dated 28th May, 1993. We refrain ourselves from expressing any opinion regarding the contention advanced by Mr. Misra that there has been a violation of administrative instructions contained in Annexure 2. If there has been any violation of administrative instructions, following the dictum laid down by Their Lordships in the case of Mrs. Shilpi Bose (supra), the affected party should move his higher authority and courts should not interfere. In addition to the above, we may say that there is no allegation of mala fide or violation of mandatory statutory rules. Therefore, we do not find this to be a fit case for interference. Hence dismissed. No costs.

4. In Original Application No. 356 of 1993, we have heard Mr. Aswini Kumar Misra learned counsel for the petitioner, who has been transferred from Keonjhar to Athamalik. We have also heard Mr. Ramakanta Mohapatra learned counsel appearing for Opposite Party No. 4, Mr. K. C. Mohanty learned Government Advocate appearing for the State Government of Orissa and Mr. Uma Ballav Mohapatra learned Additional Standing Counsel (Central) appearing for the Central Government. In this case Mr. Misra urged that there is also violation of the administrative instructions, contained in Annexure 2, and that the petitioner had been transferred in ~~between~~ the month of July, 1990 and once again in August.

1990 and then after his posting at Keonjhar for a very short period, he has again been transferred to Athamalik. Apart from the fact that violation of administrative instructions cannot be a ground for the Courts to interfere, we are of opinion that the aforesaid contention relating to the consistent transfer order passed against the petitioner in the Month of July, 1990 and once again in August, 1990 deserves no merit because the transfer orders passed in July, 1990 and August, 1990 were admittedly cancelled. That apart the posting of the petitioner at Keonjhar has been for a little more 2 and $\frac{1}{2}$ years. Mr. Mohapatra learned counsel for the Opposite Party No. 4 submitted that this grievance of the petitioner does not come within the ambit of purview of para 1 of the administrative instructions contained in Annexure 2. All and above this we cannot but come to an irressistible conclusion that since there is no allegation of malafide or violation of statutory mandatory rules, we have no powers to extend our hands for interference. Therefore, we find no merit in the aforesaid contention of Mr. Misra. Hence the application stands dismissed. No costs.

5. We shall now pass on to Original application No. 396 of 1993 in which the petitioner is a Member of the Indian Forest Service and has been transferred from Deogarh to Koraput. The petitioner was posted in July, 1991

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and vide Annexure 1 dated 13th July, 1993, the petitioner has been transferred from Deogarh to Koraput.

6. We have heard Mr. S. Mohanty learned counsel for the Petitioner, Mr. K. C. Mohanty learned Government Advocate for the State of Orissa and Mr. Uma Ballav Mohapatra learned Additional Standing Counsel (Central). Mr. Mohanty learned counsel for the petitioner strenuously urged before us inviting our attention to the observations of Their Lordships contained in para 7 of the judgment in the case of Rejanedna Ray (supra) that the convenience of the family would be uprooted and lot of difficulties and dislocation in the family may occur has been taken notice of by Their Lordships. True it is Their Lordships have stated so in the judgment but at the same time Their Lordships have observed that on this account neither the Courts nor the Tribunal should interfere. We cannot forget that the observations made by Their Lordships in the case of Mrs. Shilpi Bose and others (supra) has ^{not} been unsettled as a bad law that ^{is} the Courts should not interfere when there is a violation of the administrative instructions. In the circumstances stated above, we find no merit in the contention of Mr. Mohanty.

7. To add to all this, we would also find that in the present case there is no allegation of mala fide or violation of statutory rules. Therefore, we cannot find this case to be a fit one for interference.

Hence the case stands dismissed.No costs.

8. Due to dismissal of all the cases mentioned above,the stay order passed in all the three cases stand automatically vacated.

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MEMBER (ADMINISTRATIVE)
16 SEP 93

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VICE-CHAIRMAN

Central Admn. Tribunal,
Cuttack Bench,/K.Mohanty,
16th September,1993.