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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 516 of 1993
Cuttack this the 20th day of February, 1998

Kedar Mohanty ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

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

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN
 20.2.98

S.K. Agarwal
 (S.K. AGARWAL) 20/2/98
 MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No.516 of 1993
Cuttack this the 20th day of February, 1998

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND

THE HONOURABLE MR. S.K.AGARWAL, MEMBER (JUDICIAL)

...

Kedar Mohanty
S/o. Late Purna Chandra Mohanty
Senior Grade Officer
Indian Information Service, Gr. B
Working as -
Field Exhibition Officer
Directorate of Advertising &
Visual Publicity, Itanagar
Arunachal Pradesh

A permanent resident of :
Village - Keshapur, PO:Kadaliban
Via : Pattamundai,
District : Kendrapara

..

Applicant

By the Advocate:

M/s. S. Palit
B.Mohanty
M.Malicka
A.Das
S.K.Naik
S.K.Behera

-VERSUS-

- 20/2
1. Union of India
represented through
Secretary to Government of
India, Ministry of Information
and Broadcasting,
Shastri Bhawan, 'A' Wing
New Delhi - 110 001
 2. Under Secretary to Govt. of India
Ministry of Information & Broadcasting
Shastri Bhawan 'A' Wing
New Delhi - 110001
 3. Station Engineer,
Akashvani, Cantonment Road
Cuttack-753001
 4. Administrative Officer
All India Radio,
Cantonment Road, Cuttack

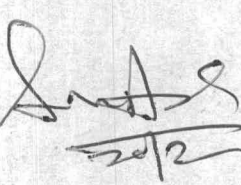
5. Superintending Engineer
Akashvani, Cantonment Road
Cuttack-753001
6. Joint Secretary to Govt. of India
Ministry of Information & Broadcasting
Shastri Bhawan, 'A' Wing
New Delhi - 110 001
7. P.K. Bisoi
A.I.R. News Reporter
Bhubaneswar,
District: Khurda

By the Advocate:

.. Respondents
Mr. U.B. Mohapatra
Addl. Standing
Counsel (Central)
for Res. 1 to 6

...
ORDER

MR. S.K. AGARWAL, MEMBER (J): The applicant has filed this application before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985, with the averment that he is a member of Indian Information Service and was working as news reporter, A.I.R., Bhubaneswar. It is also stated that on 14.2.1993 ^{some} unruly scenes took place in Congress Bhawan of Bhubaneswar and as per advice of the Editor-in-charge, General News Room, News Services Division of All India Radio, New Delhi the applicant had to file a news story on that incident. In view of this, news item sent by the applicant was broadcast and telecast in the official media on the same day, but this was taken an exception by the higher authorities. On 20.2.1993, the filing of the report by the applicant was discussed in a meeting at Bhubaneswar in the presence of Respondent No.6 and later on the applicant came to know that higher authorities were not happy about the reporting of



14.2.1993 incident at Congress Bhawan. It is also stated that applicant proceeded on leave on 9.3.1993 to look after his ailing mother and looking her deteriorating condition he applied for two months E.L. from 10.3.1993 to 10.5.1993. While on leave, the applicant received the transfer order dated 1.3.1993 together with the relieve order transferring him to Itanagar. Thereafter the applicant submitted a detailed representation immediately to the Ministry of Information & Broadcasting stating clearly that he has already served the difficult/most difficult stations for more than eight years. But his representation was not fairly considered.

2. The applicant, therefore, prays that the order vide Annexure-3 transferring him to Itanagar be quashed and to allow him to work at Bhubaneswar as usual.

3. Counter was filed on behalf of the Respondents stating that the applicant has served more than 12 years in Bhubaneswar and services of the applicant are transferable. Therefore, this Tribunal should not interfere with the order of transfer unless malafides are proved against the Respondents. In the instant case there is no malafide and the applicant has been transferred in a routine manner on the ground that he has overstayed at a particular station. It was admitted by the respondents in the counter that the applicant was transferred and posted as Field Exhibition Officer, D.A.V.P., Itanagar vide Information

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and Broadcasting Adesh No.30/93-Cts. dated 1.3.1993 (Annexure-3 to O.A.) and he was relieved from the post of News Reporter, A.I.R., Bhubaneswar, to join his new place of posting at Itanagar. It is also stated that the applicant was expected to comply with the impugned order, but he did not do so and continued to remain absent himself from duty without any valid reason. The applicant has not been granted E.L. as leave cannot be claimed as a matter of right. In the counter all the allegations levelled by the applicant against the respondents have been denied and it has been stated categorically that transfer of the applicant was made keeping in view the administrative exigencies and public interest. The applicant was over due for the transfer from Bhubaneswar as he had stayed there for more than 12 years. Therefore, as per counter filed by the respondents, it was prayed that application filed by the applicant be dismissed with costs.

4. We have heard the learned counsel for the petitioner and Shri U.B.Mohapatra, learned Addl. Standing Counsel(Central) appearing on behalf of the Respondents and perused the whole record.

It is pertinent to mention here that Government of India, Ministry of Information and Broadcasting, vide its order No.104/96-IIS have transferred the applicant from Tura to Bhubaneswar which was communicated to the applicant vide

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letter No.A.22012/3/95-IIS dated 23.7.1996 and the applicant has joined at his new place of posting at Bhubaneswar in compliance of this order. A Misc. Application No.787/96 was filed by the Respondents and vide its order dated 15.1.1997, this Tribunal held that since the applicant's grievance was redressed, therefore, the Original Application has become infructuous and it was disposed of accordingly. But the petitioner filed a Misc.Application 136/97 praying for recalling the order dated 15.1.1997 and this Tribunal, after hearing both the parties recalled the order dated 15.1.1997 and the Original Application was again placed for hearing. Thereafter arguments of learned counsel for both the parties were heard.

5. In the Original Application the applicant has alleged mala fides and the basis of mala fides have been urged about the reporting of incident dated 14.2.1993 at Congress Bhawan, Bhubaneswar. It is also submitted that on 20.2.1993 the filing of above report by the applicant was discussed at a meeting at Bhubaneswar in the presence of Res. 6 and after that the applicant came to know that the higher authorities were not happy with him and this has been the reason of his transfer. But these allegations were not substantiated by any cogent reliable and trustworthiness, evidence. The allegations of the applicant are based on hearsay

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evidence.

No affidavit of the person concerned who had participated in the meeting of 20.2.1993 has been produced before the Tribunal so as to believe that this reporting by the applicant on 14.2.1993 incident at Congress Bhawan was only the reason of his transfer. The burden of establishing mala fides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. This view was expressed by the Hon'ble Supreme Court of India in a leading case, viz. E.P. Royappa v. State of Tamil Nadu (1974) 4 SCC 3: The Apex Court further observed that the Court^{would}/therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and high authorities - not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set-up, but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must assess the merits of the allegations of mala fides made



made by the petitioner against the respondents.

6. In the instant case it reveals that mala fides are only alleged against the respondents, but the applicant failed to establish mala fides alleged by him in this application. Transfer is an incident of service and an employee can be transferred in the interest of administration at any place within the jurisdiction of the department. As the law stands, there are only two grounds on which a transfer can be interfered by the Tribunal: (i) mala fides and (ii) infraction of any statutory rules or guidelines. The petitioner has not alleged that there was any violation of any statutory rules or guidelines while passing the order of transfer. As the applicant failed to prove mala fides against the respondents and as there is no material on record to establish mala fides, therefore, mere allegations by the applicant would not suffice to hold mala fides against the respondents. We, therefore, do not find any merit in this application and it is liable to be rejected.

The application is, therefore, is rejected with no order as to costs.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN
 20.2.98

S.K. Agarwal
 (S.K. AGARWAL)
 MEMBER (JUDICIAL)
 20/2/98

B.K.Sahoo/C.M.