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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 604 of 1993

Date of Decision: 8.12.1993

Maheswar Behera

Applicant(s)

Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? No


MEMBER (ADMINISTRATIVE)

08 DEC 93


VICE-CHAIRMAN

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Union of India & Others

Respondents

For the applicant

M/s. Deepak Misra

A. Deo,

B. S. Tripathy

R. N. Naik,

D. K. Sahu,

P. Panda,

Advocates

FOR the respondents

Mr. U. B. Mohapatra

Standing Counsel

(Central)

C O R A M:

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

AND

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

JUDGMENT

MR. K. P. ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner Shri Maheswar Behera, prays for quashing the order passed by the competent authority transferring him from Bhubaneswar to Rourkela.

2. The petitioner is functioning in the office of the Regional Provident Fund Commissioner, Bhubaneswar and he has been transferred to Rourkela. This order is under challenge and sought to be quashed.

3. No counter has been filed by the opposite parties on the ground that the officer who was deputed to assist the learned Standing Counsel Mr. U. B. Mohapatra to file counter has not verified the statement, made in the counter

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and therefore it could not be filed as submitted by Mr. U. B. Mohapatra, learned Standing Counsel.

4. We have heard learned counsel for the petitioner and Mr. U. B. Mohapatra, learned Standing Counsel.

5. Law regarding transfer has been well settled by a plethora of judicial pronouncements of the Apex Court beginning from the case of Union of India and others vs. H. N. Kirtania reported in AIR 1989 SC 1774 and 1989 SCC (L&S) 481, Mrs. Shilpi Bose and others vs. State of Bihar reported in AIR 1991 SC 532 and Union of India and others vs. S. L. Abas reported in 1993 Judgment To-day 789 and Rajendra Ray vs. Union of India reported in AIR 1993 SC 1236. In the above mentioned judgments Their Lordships have taken the consistent view that Court should not interfere with the order of transfer unless the order has resulted from mala fide, bias or violation of statutory mandatory rules. Their Lordships have further held that in case there is any violation of administrative instructions, the affected party should move the higher authority ^{rather} than invoking ^{by} the interference ^{by} of the Court. In the present case, the petitioner has not pleaded any violation of statutory mandatory rules or violation of any administrative instructions. The only ground on which the learned counsel for the petitioner wanted the impugned order of transfer to be quashed is as follows :

" The petitioner had filed an application under Section 19 of the Administrative Tribunals Act, 1985 before this Bench challenging the order ~~passed~~ by the competent authority, superseding his

claim for promotion and this formed subject matter of Original Application No.402/89.

After disposal of the said original application, the concerned authorities did not implement the judgment, and therefore, the petitioner filed an application for initiation of proceeding for contempt against the Regional Provident Fund Commissioner and others. This contempt petition is said to have been filed on 17.9.1993 and notice was issued on 28.9.1993, and the impugned order of transfer has been passed on 20.10.1993.

Prima facie in the first fluxh this argument appears to be reasonable, but on a deeper scrutiny one would find that the order of transfer is a ^{rotational} rational one. Fortunately or unfortunately, the order of transfer has been passed, so far as the present petitioner is concerned on the basis of rotational transfer. Since the impugned order of transfer is on the basis of the circular issued by the concerned authority relating to the rotational transfer, we do not think it just and expedient to hold that there was any mala fide on the part of the competent authority in transferring the petitioner from Bhubaneswar to Rourkela.

In addition to the above, we must keep it on record that learned Standing Counsel Mr.U.B.Mohapatra submitted before us that the judgment passed by this Bench in O.A.No.402/89 has been implemented and the petitioner has been given promotion to the post of Headclerk. In such circumstances, question of malafide does not arise on the part of the competent authority.

6. In the circumstances stated above, we find no merit in this application which stands dismissed.No costs.


MEMBER (ADMINISTRATIVE)

08 DEC 93
Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 8 12.1993/B.K.SAHOO


VICE-CHAIRMAN