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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 526 of 1994

Cuttack this the day of December, 1994

A.D. Rao

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 No.
Central Administrative Tribunals or not ?


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

13 DEC 94

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No.526 of 1994

Cuttack this the day of December, 1994

C O R A M:

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

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A.Divakar Rao
aged about 53 years,
son of Late A.Venkata Narayana,
resident of Kalika Temple Street
Berhampur-2, Dist:Ganjam
at present working as Asstt.
Superintendent, Berhampur,
Dist:Ganjam

Applicant/s

By the Advocate: M/s.B.L.N.Swamy
S.Dash

Versus

1. Union of India represented by
Secretary, Ministry of Planning,
Department of Statistics,
Sardar Patel Bhawan,
Parliament Street
New Delhi-110001
2. Director,
National Sample Survey Organisation
(Field Operation Division)
Department of Statistics
C-Block, 3rd Floor,
Pushpa Bhawan, Madangir Road
New Delhi-110062
3. Regional Assistant Director,
National Sample Survey Organisation
(Field Operation Division)
Department of Statistics,
3-A Budheswari-751006
Bhubaneswar, Dist:Khurda
4. Superintendent
National Sample Survey Organisation
(Field Operation Division)
Berhampur, District:Ganjam

Respondent/s

By the Advocate: Mr.Ashok Mishra,
Sr.Standing Counsel (Central)

O R D E R

MR.H.RAJENDRA PRASAD, MEMBER (ADMN): Shri A.Divakar Rao, Assistant Superintendent, National Sample Survey Organisation, Berhampur, the applicant in this case, stands transferred to Nizambad in Andhra Pradesh vide orders issued by Respondent No.2 vide No.A-32016/2/93-Estt. II(ii) dated 12th July, 1994. He had approached this Tribunal once before in Original Application 440/94 praying for the quashing of the said order. This prayer was not found acceptable and in disposing of the Original Application, it was directed that the applicant may submit a representation to the concerned authorities setting forth his problems, to enable them to reexamine his request. To facilitate this, the operation of his transfer was stayed for thirty days. The applicant thereupon duly submitted a representation but it was turned down by the authorities. The present application is filed against the rejection of his representation requesting cancellation of the transfer order. The prayer in the present application remains the same as before and the grounds for seeking the relief prayed for are virtually the same as on the earlier occasion except that the applicant in this instance brings an allegation of malice against the Respondents.

2. (i) In a career spanning thirty one years, the applicant has served for approximately twelve years outside Orissa, the remaining period having been spend in one or the other office in this region. He has been in his present

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post since 1984, having come therefrom Aurangabad in Maharashtra at his own request. One of his grievances is that there are several colleagues who have been working in the region far longer with fewer postings outside it. One other argument is that, having brought ^{him} to Berhampur, the authorities should not have posted the applicant out of that place in the same rank, - an action which, according to him, is against a practice which has ripened into a rule.

ii) The applicant is of the view that the orders of transfer was the result of pressure and influence brought on Respondent No.2 by an Assistant Director (since transferred) who had harassed him constantly in the past and against whom he had made certain complaints earlier. It is his suspicion that certain adverse reports which may have been sent by the latter could well have led to the issue of the impugned orders. A few instances and details of his own complaints against the said Assistant Director have been cited in support of this allegation.

iii) The applicant has a feeling also that the transfer is probably designed to deprive him of a chance to effectively pursue another Original Application, filed before this Tribunal and pending disposal, and other court cases pending in some other Courts.

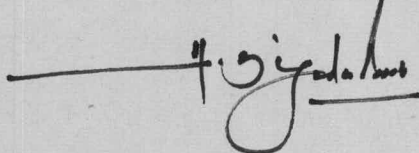
iv) Next, a number of problems are enumerated by the applicant concerning himself and the family.

[Signature]

Based on the above arguments, the applicant prays for the quashing of all orders issued in connection with the impugned transfer and a direction to the opposite parties to permit him to discharge his duties in the post he was working in till the impugned transfer.

3. In their counter-affidavit to the application, the respondents state that: among all Assistant Superintendents in SRO, Berhampur, the applicant has had the maximum stay in the post; that the applicant has an all-India transfer liability; and that there are no vacancies at present to retain or accommodate him in any of the three SROs in Orissa, the post held by him having already been filled by an official posted in his place. They proceed to give the service-details regarding some officers who were named by the applicant as serving in the region for longer period(s) than himself, and deny the allegation of malice. As regards the applicant's reference to some pending litigation before the law-Courts and this Tribunal, the Respondents point out that the presence of the applicant is not necessary for the purpose since he can quite adequately instruct and brief his counsel in such matters. The respondents point out that the applicant was certainly not the only one posted out on administrative grounds since twenty-eight others have been similarly shifted in a batch of 68 officials transferred through the impugned orders.

4. During the hearing of the case on 23.11.1994,



the learned counsel for the petitioner drew my attention to Civil Appeal No.4866 of 1992 (arising out of SLP-Civil-No.19506 of 1991) disposed of by Hon'ble Supreme Court (1993, Vol.8 AIR SC 1236). In para 7 of the Judgment, it was observed that an order of transfer of an employee is not liable to be struck down, unless such order is passed malafide or in violation of service rules and guidelines for transfer without any proper justification. Shri R.L.N. Swamy, the learned counsel, asserted that this Judgment, thus lays down three criteria,-viz., malafides, service rules and guidelines for transfer, and proper justification, - which constitute the valid parameters of any transfer, and because these criteria have not been fulfilled in the present case, the impugned orders deserve to be set aside.

5. The facts and arguments advanced by the parties have been duly noted and carefully examined.

i) The personal problems of an employee, if any, the need to fill up or not to fill up any particular post/vacancy, and the suitability or otherwise of a particular officer to work in a particular post or station, are all concerns exclusively of departmental authorities. It is not open to this Tribunal to assess or decide such questions. The applicant has been working in the post for a decade now, and it cannot be said that ten years is a short time in any particular appointment. Very many officers in the department seem to have been similarly working in their respective current appointments for

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long periods. Under the circumstances it is open to the authorities to select anyone of them for posting out in the context of overall circumstances, applicable to normal transfers after taking into consideration the individual needs, suitability and the departmental interests. It is unrealistic to expect that some kind of precise arithmetical parity needs to be maintained in terms of the years, months or days spent by various officers in their current posts before selecting them for a transfer. The applicant is in a service which carries an all-India transfer liability and it is futile to argue that once an officer is accommodated in a particular post at his own request, he cannot ever be shifted out except on promotion. There is no rule or law which envisages or sanctions such indefinite continuance in any post.

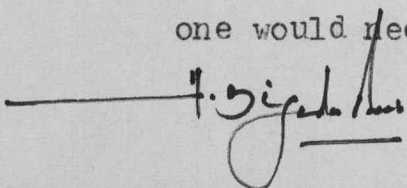
ii) The applicant has narrated certain incidents relating to his interaction with one of his departmental superiors who has since been transferred-out and who, moreover, is not a party to this case. The applicant, however, has not produced any irrefutable evidence to substantiate the allegation of malice on the part of the said officer. In saying this, it is fully realised that malafides are difficult to prove under the best of circumstances. This would, however, hardly mean that any unsubstantiated, unproven or even

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unprovable allegation can be levelled by an officer against his superiors and insist that it be accepted as true. It was urged by the learned counsel that inasmuch as his allegations of malafides or malice levelled against one of his officers has not been replied to in the counter-affidavit, it can be taken that they accept them or do not at least deny the charge. This argument is untenable. It is not necessary, much less obligatory, for the respondents to answer every unsubstantiated allegation, and the mere fact that they have chosen to remain silent about these allegations is not proof enough or even adequate to hold that the charge is indeed correct.

6. Coming to the Judgment of the Hon'ble Supreme Court referred to by the counsel for the petitioner (para-4 above) the observations made in para - 7^{therein} are significant. Applying the very same tests to the present case, it needs to be noted that (a) no malafide on the part of any one has been satisfactorily established, (b) no service rule, nor any guideline for transfer has been shown to have been violated, nor indeed has any such suggestion been raised in the application. As for justification, the same has been explained by the respondents and no particular unjustified action of punitive nature has been proved to have been taken against the applicant in this case.

7. Quite apart from all other considerations, one would need to take serious note of the observations



of Hon'ble Supreme Court in the case of Union of India vs. S.L.Abas (1993(3) 17 JT 678) which read thus :

" Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of **transfer** is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot **interfere** with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration."

" The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order of transfer made by the Senior Administrative Officer (competent authority)"

7. In the light of the foregoing discussions I do not find it possible to intercede on behalf of the applicant. He has to seek such remedies as he may from his departmental superiors. I cannot also hold that the orders of transfer (along with 67 others) are in any way arbitrary or illegal. Orders contained in Annexure-2 are matters purely of internal administration of the concerned department and not in themselves impermissible, meriting any kind of intervention from this Tribunal. Annexures 6, 7 and 8 are not in any way inherently objectionable.

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8. The application is, therefore, liable to be disallowed and is disallowed. No costs.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

13 DEC 94

B.K.Sahoo//