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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 641/94

Cuttack, this the 3rd day of May, 1995

Nandalal Bose ... Applicant

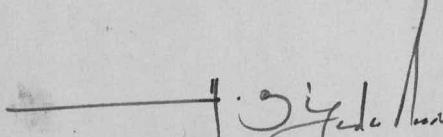
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Union of India and others ... Respondents

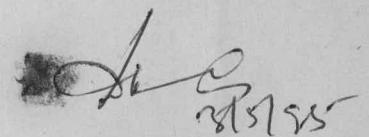
(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters
or not? *yes*

2. Whether it be circulated to all the Benches
of the Central Administrative Tribunal or not? *yes.*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

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(D.P. HIREMATH)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.641 OF 1994

Cuttack, this the 3rd day of May, 1995

CORAM:

THE HONOURABLE SHRI JUSTICE D.P.HIREMATH, VICE-CHAIRMAN
AND
THE HONOURABLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMN.)

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Nandalal Bose,
aged about 40 years,
Son of late Sri Biswanath Bose,
resident of Bakharabad,
P.S-Purighat,
Town/District Cuttack,
at present working as
Clerk Grade I,
Doordarshan Kendra, Bhubaneswar

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Applicant

By the Advocates

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M/s B.Pal, S.C.Parija &
O.N.Ghosh.

-versus-

1. Union of India,
represented by Secretary to
Government of India, Ministry of
Information & Broadcasting,
Sastribhawan, New Delhi.
2. The Director-General,
Doordarshan, Mandi House,
Copernicus Marg,
New Delhi.
3. Deputy Director General (E.Z.),
All India Radio,
Akashvani Bhawan,
First Floor, Calcutta 700 001.
4. Superintending Engineer,
Doordarshan Kendra, Bhubaneswar-751 005.
5. Shri K.P.Kingdang,
Deputy Director General (ER),
All India Radio,
Akashvani Bhawan (First Floor),
Calcutta

...

Respondents.

By the Advocate

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Shri Akhaya K.Misra

...

O R D E R

D.P.HIREMATH, VICE-CHAIRMAN The applicant working as Clerk Grade I in Doordarshan Kendra, Bhubaneswar, has challenged his order of transfer made by the Deputy Director General (Eastern Region), All India Radio, Calcutta, dated 16/17.11.1993 from the Doordarshan Kendra at Bhubaneswar to the All India Radio at Jeypore, on two grounds, namely, want of jurisdiction and mala fides. On the point of jurisdiction, he states that the authority in the All India Radio who transferred him from the Doordarshan Kendra did not make necessary consultation as required by administrative orders. On the mala fides, he asserts that the then Deputy Director General of the All India Radio, Eastern Region, Calcutta, had an axe to grind against the applicant and the transfer order having been made on his direction or at any rate, implemented on his direction though earlier made, is vitiated on that ground.

2. The applicant joined service as Clerk Grade II in All India Radio, Cuttack, in the year 1974 and worked as such till the year 1986 when he was promoted to Clerk Grade I and posted at the Doordarshan Kendra ('D.D.K.' for short) at Cuttack and perhaps in the same year when the office of

the D.D.K. was shifted to Bhubaneswar, he also went with the office. That his transfer was initiated in August, 1993 is borne out by record. On 2.8.1993 the Director, Doordarshan Kendra, Bhubaneswar, wrote to the Station Director, All India Radio inviting his attention to their discussion in the previous week regarding transfer of administrative staff including D.D.K. Bhubaneswar. Initiative came from him in the following words :

"Shri N.L.Bose, CG-I has overstayed at this Kendra for a considerable period of years. It is felt, by virtue of remaining in one place for years together, a sense of disgruntling has developed in him. This Kendra has no objection if Shri N.L.Bose, CG-I is transferred to some other place. Meanwhile, this Kendra has also intimated to DG (Doordarshan) for similar action.

In case the transfer of Shri N.L.Bose, CG-I is considered, a suitable CG-I may please be posted at DDK, Bhubaneswar against the resultant vacancy."

Reasons for transfer find place in the letter of the Station Director addressed to the Deputy Director General (E.R.), All India Radio, on 4.8.1993 and as it highlights the then prevailing conditions in the office on account of misdemeanour of the

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officials stated therein including the present applicant. It is worthwhile to reproduce the same for the proper understanding of the reasons behind the order of transfer. It reads thus:

"The Dy. Director General (ER),
(Shri B. Krishnan, by name),
All India Radio,
Akashvani Bhavan,
Calcutta-700 001.

Sub: Proposal of transfer in respect
of Administrative Staff in
Orissa State.

Sir,

A five member group amongst the AIR & CBS Administrative Staff Association, Cuttack Unit, Cuttack namely (1) Shri S.K. Mangaraj, CG-I, CBS, Cuttack (2) Shri U.K. Das, CG-I, RTI(P), AIR, Cuttack; (3) Shri T.K. Maity, CG-I, AIR, Cuttack; (4) Shri N.L. Bose, CG-I, DDK, Bhubaneswar and (5) Shri S. Acharya, CG-I, CBS, AIR, Cuttack have developed such character which are unbecoming of a Government servant. Not only they try to put hurdles for smooth functioning of the station but also vigorously eulogising the simple, honest fellow staff members and subordinate staff to raise voice against the superiors on some pretext or other. Unless they are disturbed from this station on transfer, it is apprehended that the situation may turn to that extent where it may be practically impossible to handle them. To neep the bud in the appropriate time, it is suggested that their transfer may be effected forthwith.

The then DDG, Shri N. Sikdar while making frequent tours to this station to take the stock of the situation, was of the opinion that these disturbing elements should be transferred so as to bring not only a cordial atmosphere but also retrieve the image of the institution. Before a proposal to this effect is preferred, the DDG, Shri Sikdar has been transferred to DDK.

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Meanwhile, a proposal of transfer of few administrative staff was sent to DG(Shri G.C. Das, DDA, by name) vide this office letter of even number dated 2.6.92 and subsequently to DDG(ER), AIR, Calcutta, vide this office letter of even number dated 12.8.92 by the then SD, Shri L.Rehman but the proposals seem to be eluded. The undersigned is of the opinion that the measures taken by Shri Rehman was appropriate and if it was materialised the situation would have improved to a better position."

While proposing the transfer of the applicant to All India Radio, Jeypore, the Station Director says thus:

"In regard to transferring of Shri N.L.Bose, CG-I from DDK, Bhubaneswar to AIR, Jeypore, figured at Sl.no.3 above, it is stated that the Director, DDK, Bhubaneswar has been consulted and he suggested the immediate transfer of Shri N.L.Bose from DDK, Bhubaneswar to some other place as he is creating problems.

It is requested that the above proposal may please be considered and necessary order to this effect may please be communicated to this office immediately."

The Deputy Director General, Eastern Region, however, took more than a year to issue necessary orders on this proposal and it was only on 16/17.11.1993 that the applicant was transferred to A.I.R., Jeypore and one B.Pradhan, CG-I of A.I.R., Jeypore, was transferred to D.D.K, Bhubaneswar.

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3. For reasons which are not clear, the aforesaid order of transfer of 17.11.1993 remained in a cold storage till the matter was again taken up by Mr.K.P.Kingdang, Deputy Director General (E.R.) of All India Radio, Calcutta, by his letter dated 19.7.1994. It refers to misconduct on the part of the applicant and in consultation with the Zonal Head of All India Radio, Cuttack, the Director General of Doordarshan had been requested to implement the transfer order of the applicant either to All India Radio or Doordarshan Station within the zone. Consequently though no mention was made in the order of 22.9.1994 to the letter of the said Mr.K.P.Kingdang, the impugned order came to be passed by the Deputy Director General (E.R.) on 22.9.1994 for implementing the transfer order passed on 17.11.1993. While B.Pradhan, C.G.I of A.I.R., Jeypore obeyed the order and joined the Doordarshan Kendra at Bhubaneswar, the applicant has challenged his order of transfer. What prompted the said Mr.K.P.Kingdang to take up the matter is borne out by the record.

4. While the transfer order of 17.11.1993 of the applicant was yet to be implemented, the said Mr.K.P.Kingdang, Deputy Director General (E.R.), All India Radio, Calcutta, came for inspection

of the office of the D.D.K. at Bhubaneswar on 29.10.1993. He found the applicant (Nanda Lal Bose, C.G.I) drinking liquor in the office and almost in a drunken state. Even when Mr. Kingdang disclosed his identity, the applicant stood up and misbehaved with him by patting on his back and asked for a cigarette. This act of the applicant was resented by Mr. Kingdang and he wrote to the Station Director of All India Radio, Cuttack, on 2.11.1993 to take necessary action against him and also to transfer him outside Bhubaneswar and Cuttack (Amexure-3/A). A memorandum was issued on the applicant on 17.1.1994 drawing his attention to the allegations made by Mr. Kingdang and pointing out that it was against Conduct Rules and he was called upon to explain why action should not be initiated against him. In his reply dated 19.1.1994 (Amexure-4) the applicant, while denying these allegations, asserted that he had discussion with A.S.D. (Assistant Station Director) regarding supply of a vehicle to the said Mr. Kingdang for five days for round the clock service. No movement schedule was given by him for the purpose as required by the Rules. When this discussion was going on between him and the A.S.D., Mr. Kingdang was standing some distance away and might have overheard what he was telling the A.S.D. Even then a vehicle was

in fact used by Mr. Kingdang for five days. He, therefore, surmised that perhaps for this reason, Mr. Kingdang might have woven a story against him out of vengeance. He also maintained that there would never be any positive proof in support of his being under the influence of intoxication and, therefore it should be held that it was a complex of imagination of the Deputy Director General (Mr. Kingdang). Nothing more is available to throw more light on these happenings during the visit of Mr. Kingdang. It was, however, admitted by both sides that after this explanation was given, no further action was initiated against the applicant though formal order in this behalf of the Superintending Engineer, D.D.K., Bhubaneswar (Annexure-3) is coming forth.

5. While this episode involving the said Mr. Kingdang and the applicant relates to the mala fides urged by the applicant, we consider the jurisdictional aspect in the first instance. With regard to the order of transfer made on 17.11.1993, the Deputy Director (Mr. S.M. Abbas) in the office of the Directorate General New Delhi, wrote to the Deputy Director General (E.R.), All India Radio, Calcutta, on 9.12.1993 that for the transfer of officials

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from A.I.R. to Doordarshan or vice versa, the Doordarshan Directorate's 'no objection' is required. The contravention of the said provisions of transfer policy has resulted in stalemate and the relief of Nanda Lal Bose from Bhubaneswar is not possible in the interest of work. He, therefore, requested to cancel the transfer of the applicant to A.I.R., Jeypore. He, however, added that he had no objection in accommodating B.Pradhan at D.D.K., Bhubaneswar, against the available vacancy (Annexure-1). Again on 7.1.1994 the said Mr. Abbas by the office memorandum (Annexure-2) requested the Station Director, All India Radio, Cuttack, to cancel the order of transfer of the applicant to A.I.R., Jeypore. At the same time, he added that the explanation of the applicant for his misbehaviour with Mr. Kingdang was being called for. He again added that B.Pradhan, C.G.I transferred from A.I.R., Jeypore to D.D.K., Bhubaneswar would be accommodated against one of the two vacant posts. On 25.10.1994 a letter was addressed from the office of the Superintending Engineer, D.D.K., Bhubaneswar that B.Pradhan transferred from A.I.R., Jeypore, was accommodated at D.D.K., Bhubaneswar, and the Director General, Doordarshan, New Delhi, may be referred to in the matter of the applicant.

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It thus becomes clear that only after the order of transfer was made on 17.11.1993 of the applicant, the question of impropriety was raised by the Deputy Director, Mr.S.M.Abas and perhaps that must have resulted in non-implementation of the order immediately after it was passed on 17.11.1993.

6. It is undisputed that the transfer policy has been evolved with regard to the transfer of officials as per the cadres of administrative staff in the same zone. Delegation of power was made in the memorandum dated 22.3.1991 for transfer in Zones where no Deputy Director Generals are available. The same reads as follows:

"The powers to transfer Group 'C' Ministerial Staff in the respective Zones have been delegated to DDGs in West, East and North-East regions. In respect of the regions where there are no DDGs namely, Northern, Central and Southern regions transfer of Ministerial Staff upto Head Clerk level are made by the Directorate on receipt of the proposal from the respective Zonal Heads.

2. For some time past it was being felt that keeping in line with the Government's policy to decentralize the authority further down in line, the power to transfer Group 'C' Ministerial Staff of All India Radio/Doordarshan be delegated to the respective Zonal Heads of All India Radio Stations in each zone. The Staff Associations have also raised the issue of transfer of powers to the Zonal Heads in respect of Group 'C' Ministerial Staff where there are no DDGs.

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3. The matter has been considered in detail and it has now been decided that all Zonal Heads of All India Radio Stations be vested with the powers to transfer within the Zone Group 'C' Ministerial Staff of their Zone. Hence all such transfer orders will henceforth be issued by the respective Zonal Heads of AIR Stations. The Zonal Heads will of course, continue to consult their counterparts in Doordarshan Kendras, CCW Offices as is being done hitherto.

4. Formal amendment to this effect till be issued separately."

The order dated 21.5.1991 clarified that the order dated 22.3.1991 is applicable to such Zonal Stations which are not under any Deputy Director Generals.

As far back as on 27.1.1988, the Under Secretary to Government in the concerned Ministry addressed to the Addl. Director General, Doordarshan (Annexure-8) intimating the transfer policy evolved among the Doordarshan and A.I.R. staff and one of the decisions referred to have been taken in the meeting of the Deputy Director General, Doordarshan and Director General, All India Radio was as follows:

ii) Transfer/posting of Doordarshan Administrative staff on promotion will be done by AIR in consultation with the Directorate General, Doordarshan. Copies of such order, however, will not be marked to Doordarshan Kendras direct. Copies meant for Doordarshan Kendras will be sent to Doordarshan (Headquarter) which in turn will forward the same to Doordarshan Kendras."

This arrangement is stated to have been approved by the J.S.(B). It thus becomes clear that the consent of the Doordarshan Directorate has to be obtained before this transfer order was effected of the applicant as well as B.Pradhan.

7. We have pointed out above that the Director of DDK, Bhubaneswar, clearly gave his consent on 2.8.1993 to transfer the applicant to A.I.R., Jeypore, as he felt, by the said official being remaining in one office for a number of years, he had developed "a sense of disgruntling". He also informed in his letter that his Kendra had intimated the Director General, Doordarshan for similar action. It is undisputed that the applicant has been serving at the D.D.K, Bhubaneswar, which is headed by the Director and it is noteworthy that such consent given for transfer of B.Pradhan to Doordarshan Kendra, Bhubaneswar, was not at all in question. When the Director clearly states in his letter that the Director General of Doordarshan was intimated about such consent having been given, nothing remained to be done. This is how the order dated 4.8.1993 came to be issued and only after four months, i.e. in December 1993, the Deputy Director, Mr.S.M.Abbas came forward with a plea that a stalemate was created as there was no consent given for his transfer. The two letters of Mr.Abbas and the consent given by the local Director for

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transfer of the applicant on the ground of undesirability of he continuing any longer in the same office clearly give an impression of some ~~scrabbles~~ ^{merely} between the officials of the Director General at Delhi and the local Director. In our view, when there was practically no controversy and in usual course the Director of D.D.K at Bhubaneswar gave his consent to the authority in the A.I.R. competent to transfer the applicant and in pursuance of it, the transfer order was made on 4.8.1993 and further the Director General at Delhi had no objection to implement a part of the order by perhaps endorsing the consent given by the local Director something more than ~~midst~~ ^{merely} the eye could ~~mismeld~~ ^{be smelt} in the two letters of Mr.S.M.Abbas. The applicant was appointed in Cuttack Station of All India Radio in 1974 and then went ^{to} Bhubaneswar in 1986 to serve in D.D.K. Thus when the transfer order was made, he was serving at that place for more than seven years and that was the reason why according to the Director he had "developed some disgruntling". There was a mutual discussion as could be made out from his letter between him and the Station Director, All India Radio and the results of the discussion are reflected in the order of transfer dated 4.8.1993 which we have extensively quoted in this

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order. It also makes mention of the consent given by the Director, D.D.K, Bhubaneswar after being consulted. This is a classic instance of how officials stationed in one Station for long developed vested interests which may not be congenial for the smooth functioning of an organisation. For reasons best known to them, Mr. Abbas of the Doordarshan in New Delhi and the local Director, Mr. Gajendra did not see eye to eye with regard to the transfer of the applicant while at the same time Mr. Abbas had no objection for B. Pradhan being brought to D.D.K, Bhubaneswar from A.I.R, Jeypore only in an existing vacancy. In a nutshell, he says that because of non-consultation the stalemate had arisen. In our view, stalemate appears to have been created only to retain the applicant who was no longer wanted by the Director, D.D.K, Bhubaneswar. It was clearly held in the case of Shri Kamlesh Trivedi v. Indian Council of Agricultural Research and another by Full Bench of the C.A.T. (Principal Bench), Delhi (F.B. Judgments of C.A.T. (1986-89) page 80) that any transfer made in violation of transfer policy by itself would not be a ground for quashing the order of transfer for, as observed by the Supreme Court in Varadha Rao's case (1986) 4 SCC 131) instructions

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embodying the transfer policy are more in the nature of guidelines to the officers who are vested with the power to order transfers in the exigencies of administration than vesting any immunity from transfer in the Government servants or a right in the public servant. In fact, transfer policy enunciated by the Government or other authorities often allows a large amount of discretion in the officer in whom the authority to transfer is vested. However, as any transfer has to be made in public interest and in the exigencies of administration. In our view, there is no merit in the contention of the applicant that his transfer was effected without consulting the concerned officer in Deordarshan. The transfer was initiated as far back as in the month of August, 1993 and on account of some reasons which are apparently clear in the letters Annexures A/1 and A/2, the same was not implemented till 17.11.1993. There was due consultation when the order was made and, therefore, it cannot be said that the transfer order impugned suffers from want of jurisdiction.

3. On the question of mala fides, it must be said that the visit of Mr. Kingdang was long after the order of transfer was made and was required to be implemented. While it was complete on 4.8.1993, Mr. Kingdang's visit was only on 2.11.1993 and though .

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no action appears to have been taken against the applicant on that complaint made by Mr. Kingdang, the implementation of the order appears to have been dragged on perhaps for this reason as well.

^{Deputy}
The same Mr. Kingdang became the Director General of All India Radio and did take up the matter which was only awaiting implementation. The order of 22.9.1994 clearly refers to the order of 17.11.1993 which is sought to be implemented. The learned counsel for the applicant has urged that because of Mr. Kingdang's episode, the applicant is being victimised. We do not see any force in this contention. The transfer order passed as far as back on 4.8.1993 has absolutely no connection with the incident about which Mr. Kingdang reported. It was perhaps a coincidence that Mr. Kingdang sought to expedite implementation of the order which was facing some controversy from Doordarshan officials.

As rightly urged on behalf of the respondents, a part of the order permitting B. Pradhan to join at D.D.K, Bhubaneswar was even endorsed by the Director General, Doordarshan, Delhi and there are no conceivable reasons for not approving the action taken by the local Director in giving his consent which has sufficient force. In our view, the order of transfer does not suffer from

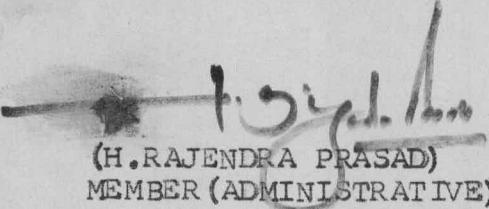
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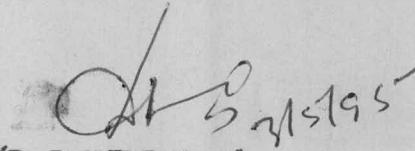
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mala fides. Consequently the Original Application has no merit and deserves to be dismissed. The same is dismissed.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

03 MAY 95


(D.P. HIREMATH)
VICE-CHAIRMAN

A. Nayak, P.S.