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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.243 OF 1995
Cuttack, this the 26th day of July, 1995

Sri Shibendu Mandal

...

Applicant

-versus-

Union of India and others

...

Respondents.

(FOR INSTRUCTIONS)

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



(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

26. Jul 95

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.243 OF 1995

Cuttack, this the 26th day of July, 1995

CORAM:

HON'BLE SHRI H.RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

..

Sri Shibendu Mandal,
aged about 34 years,
s/o Sri Jatindra Mandal,
At.155/ID Picnic Garden Road,
Calcutta-39,
at present-Office of the
Asst.Engineer(Civil), CCW,
All India Radio, Cuttack

... Applicant.

By the Advocates

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Mr.B.Bhuyan &
Mrs.Usharani Padhi.

-versus-

1. Union of India, represented through
Secretary, Information & Broadcasting,
Sastree Bhawan, New Delhi.
2. Director General,
All India Radio,
Civil Construction Wing,
PTI Building, Parliament Street,
New Delhi.
3. Chief Engineer (Civil)-I,
Civil Construction Wing,
All India Radio,
2nd Floor, F.T.I. Building,
4th, Parliament Street,
New Delhi-110001
4. Executive Engineer (Civil),
Civil Construction Wing,
All India Radio,
Sainik School Campus,
Bhubaneswar

... Respondents.

By the Advocate

-

Mr.Akhaya Ku.Misra,
A.S.C.(Central Govt.).

...

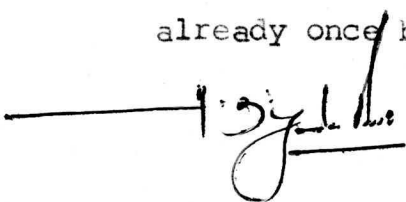
O R D E R

H. RAJENDRA PRASAD, MEMBER (ADMN.)

This O.A., filed by Shri Shibendu Mandal, Assistant Engineer, Civil Construction Wing, All India Radio, Cuttack, challenges the order passed by the Director-General, All India Radio (Civil Construction Wing), New Delhi, vide Memo.No.A-22013/1/94-CW.I dated 1st December, 1994, wherein the applicant was transferred to Patna Division of C.C.W., AIR, as Assistant Surveyor of Works. The impugned transfer formed the subject matter also of O.A.744/94 filed earlier by the applicant. The transfer was stayed and the

O.A. was disposed of subsequently on 16th March, 1995, with a direction to the Director-General to examine a representation (which had been submitted to him by the applicant sometime earlier requesting a reconsideration of the transfer) by a speaking order after taking into consideration all facts or pleas urged in the said representation as well as in that O.A.

2. In compliance with the direction issued in O.A.744/94 and referred to above, the Director-General, A.I.R., has duly disposed of the applicant's representation dated 19.12.1994 through a detailed speaking order vide his Memo.No.A-33022/41/94-CWI dated 6th April, 1995. It is this (speaking) order of the D.G., which is the subject of the present O.A. For the rest, the arguments advanced by the applicant against his transfer to Patna in this O.A. are more or less the same which had been urged already once before in O.A.744/94.



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3. Additionally, in the present application the applicant challenges the orders of relief issued by the Executive Engineer, A.I.R., Civil Construction Wing, Bhubaneswar, - directing the petitioner to take up his new assignment at Patna, consequent on the disposal of his representation by D.G., A.I.R., - on ground of mala fides and ^{its} being an instance of colourable exercise of power.

4. The sole basis of the applicant's grievance is that, firstly, he has been transferred far too often in the past and, secondly, he has spent just over one year in his present appointment. These were the very grounds urged by the applicant in the earlier (as well as the present) application. This aspect of the matter has been adequately dealt with in the detailed speaking order of the D.G. It has been explained that the initial deployment of the applicant in the Civil Construction Wing Headquarters at New Delhi was in fact for the sole purpose of preliminary on-job-training which is obligatory for all new recruits to receive. He was first posted to Calcutta after the completion of the mandatory initial training and this was indeed his first regular posting. And although he was once transferred to Silchar thereafter, it was first held in abeyance, and then cancelled eventually, in consideration of his representation. Later he was posted to Cuttack, where certain inimical relations happened to develop between him and his immediate superior officer, the Executive Engineer, leading to certain dislocation of routine works in the sub-division.

[Signature]

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It is also explained that in the ordinary course, an Assistant Engineer is rotated alternately between planning and executive jobs to enable him to acquire an all-sided comprehension of his professional requirements. This explanation is considered adequate and satisfactory.

5. As regards the applicant's contention that he should have been allowed to complete his 'tenure' at Cuttack, the same does not stand to reason because there is nothing like a rigid and inflexible tenure which could be available or claimed as a right to any government servant. The continuance in or change from a particular post is subject the to overall public interests and the interests of the parent organisation to which he belongs. And the persons who are best suited to determine or assess such interests are the official's own superiors who are competent and empowered to do so. Their decisions cannot be lightly challenged unless there is a proven existence of mala fides or vindictiveness in them. But no suggestion or indication of arbitrariness, ^{urged or} malice or vengefulness is perceived to exist in the present impugned orders.

6. The O.A., it is to be pointed out with regret, is misconceived. Instead of complying with the lawful orders issued by his higher authorities, the applicant has tried to take needless recourse to judicial intervention for which there is neither scope nor justification.

7. Similarly, the Contempt Petition arising as it does from incorrect premises on which the O.A. was itself built, is similarly misadvised. The stay order in the O.A. was passed on 12th May, 1995. The applicant was to be relieved on the same date. Although the stay order was to

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be delivered on 12th itself, it was served on Respondent 4 only on 15th May, due to a strange combination of circumstances and not due to any deliberate design on the part of anyone. The applicant was ordered relieved on 12th after a four-day advance notice which was to enable him to wind up and complete remaining tasks on hand. This was fair and thoughtful. If the applicant was seen to be still found indulging in correspondence in his former capacity, it was necessary to forestall such objectionable actions. Annexure-3 to the C.P. has to be viewed and understood in this light.

8. The petitioner is young and has nearly two and a half decades of potentially promising and fruitful service ahead of him. He would be well-advised not to squander his demonstrated energy in avoidable and fruitless litigation but to concentrate instead on acquiring increased skills and greater proficiency with a view to achieving advancement in his career which is his due.

9. In view of what has been discussed in the preceding paragraphs, the OA as well as C.P. are liable to be disallowed. Both the applications fail and are disposed of accordingly.


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

26 Jul 95

A. Nayak, P.S.