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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 325 of 1995

Cuttack this the 29<sup>th</sup> day of September, 1995

S.K. Rath

...

Applicant (s)

Versus

Union of India & Others .

Respondent (s)

(FOR INSTRUCTIONS)

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

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No.325 of 1995

Cuttack this the 29th day of September, 1995

C O R A M:

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

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Sisir Kumar Rath, aged about 33 years,  
Son of Narasinghanath Rath, at present  
working as Divisional Forest Officer  
(Territorial) Sundergarh Division,  
Dist: Sundergarh

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Applicant

By the Advocate: M/s. Ganeswar Rath  
Sradhananda Mishra

Versus

1. Union of India, represented by its  
Secretary, Department of Environment  
and Forest, New Delhi
2. State of Orissa, represented by its  
Principal Secretary, Department of  
Forests & Environment, Secretariate  
Building, Bhubaneswar
3. Principal Chief Conservator of Forests,  
Orissa, At: Sahid Nagar, Bhubaneswar
4. Subash Chandra Swain, aged about 39 years,  
Son of - Not known  
O/o. Principal, Chief Conservator of  
Forests, At: Sahidnagar

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Respondents

By the Advocate: Mr. U. B. Mohapatra,  
Addl. Standing Counsel (Central)

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For Respondent No. 1

Mr. K. C. Mohanty,  
Government Advocate  
(State of Orissa)

For Respondent Nos. 2 & 3

M/s. J. Patnaik

H. M. Dhal

B. P. Ray

For Respondent No. 4

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O R D E R

MR. H. RAJENDRA PRASAD, MEMBER (ADMN): The applicant, Shri Sisir Kumar Rath,

*[Signature]*

while working as Deputy Director, Social Forestry Project, Bolangir, was transferred and posted as Divisional Forest Officer (Territorial), Sundergarh Division, on 6th June, 1995. He made over the charge of his appointment at Bolangir on 18th June, 1995, to the Assistant Conservator of Forests, and joined the new post at Sundergarh on 21st June, 1995. It is, however, stated and seen that the officer assumed the charge of D.F.O., Sundergarh, in the absence of Shri Subash Chandra Swain in whose place he was posted. On the same day, i.e., 21st June, 1995, the posting of the applicant as well as of Shri Swain to the office of Principal Chief Conservator of Forests were cancelled by the Government.

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2. The grievances of the applicant, that -

- i) Shri S.C. Swain had been working at Sundergarh since last five years .
- ii) The cancellation of his posting was ordered merely to prolong Shri S.C. Swain's continuance at Sundergarh .
- iii) The cancellation of Shri Swain's posting was the result of extraneous pressures and considerations. And
- iv) The cancellation of his own posting ordered earlier is malicious and arbitrary.

The applicant, therefore, prays for the quashing of the impugned cancellation of his posting to Sundergarh based on the above grounds.

3. It is noticed that the applicant unilaterally assumed charge of D.F.O. (Territorial), Sundergarh, on 21.6.1995, in



the absence of Shri S.C. Swain who was required to hand over formal charge of the appointment to him. The case was admitted on 3rd July, 1995. It was again heard on 7th July, 1995, specifically in regard to the interim orders prayed for. It transpired that although the applicant 'assumed' charge on 21st June, he could not meaningfully discharge any of the duties connected with the post of D.F.O. (Territorial), Sundergarh, in the absence of the cash book and cheque book, etc., and other functional arrangements. These books were still in the custody of Shri S.C. Swain who did not formally make over charge and continued to hold effective charge of the appointment. He had only proceeded on casual leave from 21st June, 1995, reportedly in connection with a celebration in the family. Shri Rath therefore spent the interval between 21st to 28th in mainly visiting his superiors at Sambalpur and Bhubaneswar, on three different dates, confessedly to discuss his posting. On 28th Shri Swain returned from leave and resumed his duties as D.F.O. Sundergarh (Territorial).

Thus, from 21st June, 1995, to 11th July, 1995, the Division witnessed an extraordinary spectacle of two officers "functioning" simultaneously as D.F.O., and both claiming to be discharging the duties connected with the appointment. Mainly to break this unseemly impasse, on 11th July, 1995, the applicant was directed by this Tribunal to return to his earlier post of Deputy Director, Social Forestry Project, Bolangir, and to await the outcome of the final hearing.

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4. The applicant contends that he was compelled to "assume" charge of D.F.O., (T) Sundergarh, because the officer who was to make over charge to him was evading to do so. It was the impression of the applicant that Shri Swain was 'refusing' to be relieved by him. The applicant decided, therefore, to take over the charge on his own under an old instruction of the Government which prescribed such <sup>a</sup> course of action in certain specific contingencies.

5. This argument is, however, hard to accept on the basis of revealed <sup>facts.</sup> Strictly on the evidence available on record, Shri Swain proceeded on leave, which was duly granted, and is seen to have returned to resume his duties in the normal course after availing of the leave granted to him. It is quite another matter that his posting from Sundergarh Division (T) to the Office of the Principal Chief Conservator of Forests was cancelled in the meantime. Although the sequence of events may well have generated the impression in the applicant's mind that Shri Swain was evading the relinquishment of his appointment at Sundergarh only to gain time, and thereby to continue in the same post, the fact that he had applied for, and was duly granted leave during this period, adequately covers the return and resumption of duties by him. Whatever may have been his impression or grievance against Shri Swain, the circumstances for the applicant were not such as to invoke and take recourse

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to a set of instructions of the Government which were evidently meant to meet certain extreme situations where a transferred officer simply refuses to handover charge to his reliever and successor. There was no formal or proven refusal in this case, and, therefore, the one-sided assumption of charge by the applicant was clearly uncalled for. The action cannot be upheld.

6. One other grievance of the applicant is that Shri Swain's posting out of Sundergarh(T) Division was cancelled on extraneous influences and considerations. This allegation was scrutinised in the light of the copies of notes put up in the concerned file and the orders passed thereon from time to time. These were produced by the learned Government Advocate, Shri K.C. Mohanty. It is seen from the file that the transfer of the applicant, Shri S.K. Rath, from Social Forestry Project, Bolangir, was considered inadvisable because S.I.D.A. evaluation for a new Project was expected to take place shortly. On another occasion it was mentioned that the Director, S.F. Project was distinctly of the view that Shri Rath should not be transferred as SIDA review was due, because any new officer in his place might not be able to represent facts properly before the Committee for the continuance of the Project. It was also added that the cancellation of his posting will not affect any other officer. It is also noted that the proposal for the cancellation of his posting emanated at the usual level in the Secretariat and had

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been routed through all the normal levels on each occasion and the same was approved at the highest level of Government. In all this, the name of Shri S.C.Swain did not at all directly figure anywhere. His retention at Sundergarh came about only because the posting of Shri S.K.Rath had been decided to be cancelled after due deliberation, for valid administrative and professional reasons. Such cancellation was mooted as early as 16.11.1994 and examined subsequently on 24.11.1994, 31.3.1995, 16.6.1995 and finally approved on 18.6.1995. Thus, the allegation that Shri Swain contrived to invoke some extraordinary and unspecified 'influence' is not well-founded and can be categorically held to be without any basis.

Under the circumstances, the plea of the applicant for quashing<sup>of</sup> the orders contained in Government of Orissa, Forest & Environment Department Office Order No.12085 dated 21st June, 1995, is not found acceptable on any ground.

7. It is learned, however, that Shri S.K.Rath has been in his present appointment for nearly four years and may, therefore, be due for a shift. It is also evident that he desires a change of station as well as of assignment. He may therefore submit a representation to the Government setting forth his problems and preferences within thirty days from to-day. If the S.I.D.A. review is over by now, and if the continued

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presence of the officer at Bolangir is no longer regarded inescapable, the respondents shall duly examine the officer's representation sympathetically with a view to accommodating his requests and requirements in keeping with the interests of departmental work. By all accounts the applicant has a good record of work in his current posting - this much is evident or can be deduced from the official notings and opinions recorded in his case - and the same ought to weigh with the authorities. A suitable decision shall be taken in the matter within a reasonable time-limit and communicated to him.

Thus the application is disposed of.

No costs.

  
(H. RAJENDRA PRASAD)  
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//

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