

10

10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No. 540 of 1995

Cuttack this the 5th day of June, 1996

SHRI JNYAN RANJAN PATI

...

APPLICANT

VERSUS

UNION OF INDIA & 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? No.

*Narashimha*  
( N. SAHU )  
MEMBER(ADMINISTRATIVE)

11

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 540 OF 1995

Cuttack this the 5th day of June, 1996

C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

....

SHRI JNYAN RANJAN PATI, aged about 37 years,  
Son of Shri Lingaraj Pati, presently working  
as Divisional Accounts Officer-II ( under  
orders of transfer to Baripada, P.H. Division)  
Qrs. No. IV-A-17/19/5, Unit-2, Bhubaneswar,  
District- Khurda.

... ...

APPLICANT

BY THE APPLICANT :- M/s. A.K. Mohapatra, A.K. Das,  
Advocates.

-Versus-

- 1) Union of India represented through the  
Secretary to Government of India,  
Ministry of Finance, New Delhi.
- 2) Accountant General (A&E), Orissa, Puri Branch,  
At/Po/Dist. Puri.
- 3) Deputy Accountant General (Works Accounts)  
Orissa Puri Branch, At/Po/Dist-Puri.
- 4) Executive Engineer, Mech. P.H. Division,  
No.1, Saheed Nagar, Bhubaneswar, Dist. Khurda.

... ...

RESPONDENTS

BY THE RESPONDENTS :- Mr. U. B. Mohapatra, Additional  
Standing Counsel (Central)

..... . . .

*Keo*

O R D E R

MR. N. SAHU, MEMBER (ADMINISTRATIVE) :

This application has been filed on 15th September, 1995 to quash Annexure-5 dated 4th September, 1995 transferring the applicant from Bhubaneswar and posting him to Baripada P.H. Division, Baripada; to direct the Respondents 2 & 3 (Accountant General (A&E), Orissa Puri Branch and Deputy Accountant General (Works Accounts), Orissa Puri Branch) to post him at Bhubaneswar and to direct Respondents to pay the applicant's duty pay with effect from 5th May, 1995.

2. The undisputed facts leading to the present application are that by an order dated 29-6-94, the applicant was posted under the Executive Engineer Mechanical P.H. Division No.1, Saheednagar, Bhubaneswar. He availed Earned Leave from 21-3-1995 to 4-5-1995 due to his illness and joined his duties on 5-5-1995 after expiry of leave. He was relieved from duty on that date, on the ground that by an order No.172 dated 24-4-95

13

B

-3-

of Respondent No.2 ( Accountant General (A&E), Orissa Puri Branch ) one Shri A.K. Patra has been posted to join in the place of the applicant. The applicant did not get any consequential posting. Although he was relieved from the Office of the Respondent No.4, he could not join anywhere else. He pointed out that relief without consequential posting order is unjustified and he also made a request to post him in any place at Bhubaneswar as his wife is serving at Bhubaneswar as a Junior Stenographer in IPICOL. The applicant's wife represented to the Accountant General (A&E), Respondent No.2 for allowing her husband to work at Bhubaneswar. Keeping the applicant in a state of suspended animation for a period of four months, the respondents posted the applicant to Baripada P.H. Division by an order dated 4.9.1995. The applicant states that this is improper in view of Office Memorandum No. 28034/7/86 dated 3.4.86 wherein detailed guidelines have been given about the posting of both husband and wife in a station when both are employed. There is an allegation in the application

that the applicant was Vice-President of the Orissa Divisional Accountants' Association and Respondents 2 & 3 wanted to accommodate some other Divisional Accounts Officer like Shri A.K. Patra at Bhubaneswar. They were waiting for the next executive body meeting to be elected on 12-8-1995. Finding that the applicant was not an office bearer of the newly elected body, they posted the applicant at Baripada P.H. Division and the interim period from 5-5-1995 to the date of posting was shown as if the applicant was on leave.

3. In the counter-affidavit, it is stated that the applicant had taken leave during the rush period of work which was unjustified and a substitute was needed and therefore, Shri A.K. Patra was posted. To this, the applicant states that the rush period ended on 31-3-1995. It was only during the beginning of the financial year 1995-96, Shri A.K. Patra was posted. It is next averred in the counter-affidavit that there is no mandatory provision for posting of husband and wife in the same place. The Supreme Court decision, in the case of BANK OF INDIA -VS- JAGJIT SINGH MEHTA was cited for this purpose (1992 LAB. I.C. 306). That was a case where a Bank Employee voluntarily gave

an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the Officer's cadre. Therefore, the Hon'ble Supreme Court held that he could not as of right claim that the two spouses be posted at one place. It is a fact that the guidelines dated 3-4-1986 require the two spouses to be posted at one place as far as practicable but no right can be claimed. The Hon'ble Supreme Court directed "The only thing required is that the Departmental authorities should consider this aspect alongwith the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees". It is stated in the counter-affidavit that the transfer of the applicant to Baripada was in the 'public interest'. After he is relieved from 5-5-1995, it is stated that the applicant had not taken any instruction from the Deputy Accountant General (Works and Accounts) Puri, i.e. Respondent No.3 who is the cadre controlling authority for the Divisional Accountants. As the applicant had not ascertained his place of posting from Respondent No.3 immediately, he had been compelled to wait.

16  
-6-

4. I have heard the submissions of rival counsel. The first question to be decided is what is the status of the period from 5-5-1995 when he was relieved by the Respondent No. 4 ~~on~~ 4-9-1995 when he was posted to Baripada by an order of Respondent No. 2.

5. The claim of the Respondents in the Counter affidavit that the applicant should have ascertained the place of posting from Respondent No. 2 is very amusing. It is unfortunate that such a stand is taken by the Accountant General who is supposed to be a model employer, scrupulously following and mandating all the rules and circulars in this regard. The applicant had taken two days casual leave on 21st of March, 1995 and 22nd of March, 1995. He extended the casual leave upto 25th of March, 1995. Instead of joining on 27th March, 1995, he sent an application for conversion of casual leave into Earned Leave and extended the leave on medical grounds. When he joined back, he produced a Medical certificate of fitness from a Government Medical Officer. I do not see any thing irregular or improper in the procedure followed by the applicant. When

the Respondents received the Earned Leave application on 27th March, 1995 on medical grounds, if they suspected the bonafides of the applicant, they could have directed for re-examination by a medical Board, they could have refused the leave, they could have disciplined the applicant if they had found the claim of the applicant to be not genuine. I am told at the Bar that the leave was regularised upto 4-5-1995 and the applicant resumed his duties on 5-5-1995.

Thus, the Respondents' quibbling <sup>over</sup> the applicant's taking leave has become irrelevant. He was relieved without a posting order. After his relief, the applicant submitted a series of representations in Annexure-6 series with copies to Respondent No.2 and even directly to Respondent No.2. He states that he met D.A.G., Puri in his representation dated 18-5-1995 for a posting order. The Orissa Divisional Accountants' Association had made a representation to the Comptroller & Auditor General of India and refers the case of the applicant as an instance of iniquitous dispensation. Annexure-6/3 is a request for payment of his duty pay since 5-5-1995 upto the end of May alongwith sanction of leave for the

period from 21-3-95 to 4-5-1995. There was no response. He again represented to the Accountant General, Orissa, Respondent No.2 on 17-6-1995 and sought his salary from the date of leave to the date of posting order. He finally made a representation to the C&AG by Annexure-6/6 on 2-8-1995 stating that 'I have been asking AG (A&E), Orissa Bhubaneswar and AG (A&E), Puri Branch, Puri as to where I am to report to duty at Bhubaneswar. I have also been requesting for my pay for the period of such dislocation without any reply'. On 4-9-1995, the applicant made a final appeal to Accountant General (A&E) as to where he has to report to duty. In order to be fair to the applicant, I will extract hereunder sub para (IV) of page-4 of the rejoinder on behalf of the applicant filed on 7-3-96:

"(iv) Since the Respondents posted Shri A.K. Patra in place of the applicant when he was on leave, it was incumbent upon them to issue a consequential posting order in favour of the applicant. It is not the duty of the applicant to ascertain his place of posting. However,

the applicant inquired in the office of the Respondent Nos. 2 and 3 on different dates about his posting and made representations on the following dates:

- (a) 6-5-1995 : Telegram to the A.G. (A&E) Orissa and A.G. (A&E), Puri Branch, Puri.
- (b) 8-5-1995 : Regd. letter to Respondent No. 4 with copy to AG (A&E) Orissa and AG (A&E), Puri Branch, Puri.
- (c) 18-5-1995 : Fax message to the AG (A&E) Orissa with registered copy to the AG (A&E), Puri Branch, Puri.
- (d) 24-5-1995 : Registered letter of ODAA to the C&AG of India with copy to the AG (A&E), Orissa and AG (A&E) Orissa, Puri Branch, Puri.
- (e) 1-6-1995 : Fax message to the AG (A&E), Orissa, AG (A&E), Puri Branch, Puri with copy to the Secretary, ODAA.
- (f) 17-6-1995 : Fax message to the AG (A&E) Orissa with registered copy to the AG (A&E), Puri.
- (g) 20-6-1995 : Letter of Orissa Divisional Accounts Association to AG (A&E) Orissa and AG (A&E) Puri Branch, Puri.
- (h) 2-8-1995 : Registered letter to the C&AG of India with copy to AG (A&E) Orissa and AG (A&E) Puri Branch, Puri.

(i) 4-9-1995 : Letter to the AG(A&E), Orissa with copy to AG(A&E), Puri Branch, Puri.

(j) 9-11-1995 : Letter to the AG(A&E), Puri Branch, Puri with copy to the AG(A&E), Orissa, BBSR.

But the Respondents sat tight over the matter without any rhyme or reason. These documents are available in the personal file of the applicant. Copies of the aforesaid letters are annexed herewith and marked as Annexure-6 series". It is amusing to notice the argument advanced on behalf of the respondents that he could not get a posting order because he did not contact the Respondents 2 and 3 . It is incomprehensible as to what the word 'contact' means. It appears to me that Respondents 2 and 3 had deliberately not given a posting order to the applicant. They have no right to treat this period as Earned Leave. The said period from 5-5-1995 to 4-9-1995, the date of posting order shall be treated as the period of duty and salary for the said period as well as the period of leave preceding, if any, be remitted to the applicant within three weeks from the date of receipt of a copy of this order.



6. The important point to decide is the validity of the impugned order of posting to Baripada. It is stated that the applicant was posted at or around Bhubaneswar for about eight years as under:

- i) G.A. Rent, Bhubaneswar : from 8/87 to 30-8-1988.
- ii) C.M. Division No.II, Bhubaneswar. : from 9-9-1988 to 6-7-1990.
- iii) Cuttack : From July, 90 to July, 1991.
- iv) O/o. Engineer, Rural works, Bhubaneswar : July, 91 to June, 1994;
- v) P.H. (Mechanical Divn.) : from July, 1994 to 4th May, 1995.

The posting at Cuttack a distance of 24 KMs from Bhubaneswar can also be treated as a posting to accommodate the applicant to be with his spouse and therefore, I treat that for this period of eight years, he was virtually accommodated at Bhubaneswar. There is a right of the employer to transfer the applicant and this right has been exercised by the respondents considering administrative exigencies. The applicant can not claim 

to be in Bhubaneswar from the date of joining of service till retirement. Transfer is an incident of service and transfer is an administrative decision. The applicant can not claim that simply because others were retained for more than ten years, he also should be retained alongwith them. He stated the names of some of the officials who are allowed to continue in one Division; namely S/Shri S.N. Mohapatra, CM II Division, CC II Division. Housing Board EIC Irrigation Bhubaneswar from 1982 till date and Ramakanta Mohanty CM Division No.I, CC Division No. II, PH Maint. Division I, N.H. Division, Prachi Irrigation Division from 1982 till date. His grievance is that when these officers were allowed to continue for more than 14 years at a place, there is no justification for him to be transferred out. The Respondents should note that every administrative action must be within the canons of rule of law. There should be a visible transfer policy which would mandate the period a particular officer could stay at a particular station. An official can be retained at a particular place beyond the

*[Handwritten signature]*

stipulated period if the exigencies of work demand or the office to which he is deputed demands his continuance in the public interest. Similarly, if an employee is considered to be quarrelsome and mischievous or unproductive, he can be shifted even before his term closes. The administrative authority have an unquestioned discretion with regard to transfers and postings as long as such exercise of power is in conformity with known and clearly spelt out guidelines or in the exigencies of public interest. If in the opinion of the Respondents other employees needed to stay at a particular place for long in the public interest then it is not for the courts to interfere. As it is not necessary to go into the interest of others' postings in the disposal of this writ application, (they are also not made parties here), I shall refrain from examining this aspect further. This is a matter for the Administration to decide in each individual case and as long as the decision does not violate an existing rule, it has to be respected and carried out. One can not question the propriety of the action to transfer the applicant to Baripada having spent seven to eight years

at Bhubaneswar. If the authority considers it appropriate to transfer the applicant to Baripada in the public interest, the applicant shall go and join at Baripada. The courts can not interfere in the administrative discretion of the cadre controlling authority in this regard. The applicant has no vested right to stay at a particular place. Transfer is an incident of service and transfer is not a punishment. I am unable to see any infirmity in the order transferring the applicant to Baripada. The applicant, however, at an appropriate time after working at Baripada for some time make a representation for his transfer back to a place where his spouse is working. If there is an IPICOL branch at Baripada, the applicant's wife shall also apply for a posting at Baripada. It is always not the rule that the husband alone should apply to be accommodated at the place where the wife works. If there is a refusal on the part of the IPICOL authority to accommodate her at Baripada then the applicant's case can be considered by the cadre controlling authority, Respondents 2 and 3 to accommodate him at Bhubaneswar. But all these steps can be thought of after the applicant obeys the orders of transfer, joins at Baripada and works there for some time.

7. In view of this, the application is disposed of as above. There would be no order as to costs.

Kanashish Mohanty  
(N. SAHU) 576626  
MEMBER (ADMINISTRATIVE)