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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 657 of 1995

Cuttack this the 17th day of May, 1996

SOMANATH MOHAPATRA

...

APPLICANT(S)

VERSUS

UNION OF INDIA & OTHERS

...

RESPONDENT(S)

(FOR INSTRUCTIONS)

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

N. Sahu

(N. SAHU)

MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

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Cuttack this the 17th day of May, 1996

C O R A M:

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

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Somanath Mohapatra, aged 38 years,
Son of Late Gandharba Mohapatra,
Village - Madhusudanpur, PO/PS:
Baranga, District - Cuttack -
at present Postal Assistant
(Under suspension), Office of the
Postal Printing Press, Mancheswar
Industrial Estate, Bhubaneswar-10
District - K h u r d a

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Applicant

By the Advocate:

M/s. K.C. Kanungo
S.S. Mohapatra
P.K. Pattnaik
S.S. Barik

Versus

1. Union of India represented by
the Secretary to the Government
of India, Department of Post,
Dak Bhawan, New Delhi - 1
2. Chief Post Master General,
Orissa Circle, Bhubaneswar,
P.S. Kharavelnagar,
Dist:Khurda, PIN 751 001
3. Director of Postal Services(Headquarters)
Office of the Chief Post Master General,
Orissa Circle, P.S:Kharavelnagar
Bhubaneswar - 751 001
4. Manager, Postal Printing Press,
Bhubaneswar, Mancheswar Industrial Estate,
P.S. Mancheswar, Bhubaneswar-10
District:Khurda

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Respondents

By the Advocate:

Mr.U.B.Mohapatra,
Addl.Standing Counsel

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O R D E R

MR.N. SAHU, **MEMBER (ADMINISTRATIVE)**: In this application the relief prayed for is to quash Annexures-1, 4 and 5 and to declare the revocation of suspension order from the date of passing of such order by Respondent No.3 and to order for retrospective revision of the subsistence allowance till the date of revocation of order of suspension. Annexure-1 dated 28.4.1995 is the order of suspension under Rule 10(1) of the CCS Rules. Annexure-4 dated 23.8.1995 is the order of transfer of the applicant (under suspension) from Postal Printing Press, Bhubaneswar to Regional Office, Sambalpur with immediate effect. Annexure-5 dated 23.8.1995 is an order which is only consequential order to Annexure-4, passed by a subordinate authority. This petition is directed against the order of transfer from Bhubaneswar to Sambalpur.

2. The brief facts leading to this dispute are that the applicant was appointed as a Sorting Assistant in R.M.S.(K) Division, Jharsuguda. 15 Sorting Assistants were found to be surplus and the applicant was one amongst them. He was redeployed and transferred to the Office of the Chief Post Master General under Rule-38 of the P & T Manual Vol-IV. He was transferred to Postal Printing Press, Bhubaneswar, by an order dated 5.7.1991. He joined this post on 12.8.1991. He was assigned with the duty of Time-keeper. He was placed under suspension while working as a Time-keeper from

28.4.1995 after-noon by the Manager, Postal Printing Press, on the ground that the applicant, on 18.4.1995, allegedly made the Time-punching clock unworkable and out of order when on the previous date the said machine was under his custody. It is stated that the respondents suspected the sabotage to be by the applicant against the streamlining efforts of attendance of staff. The counter-affidavit states that on 18.4.1995, the applicant failed to ensure safety of the time recorder/punching clock left in his care. As a result the said machine went out of order from 19.4.1995.

3. The basic question here is the legality of Annexures 4 and 5. Annexure-4 and Annexure-5 are virtually similar. The respondents state that the applicant was transferred from Bhubaneswar Postal Printing Press to Regional Office, Sambalpur with immediate effect. "His suspension order will be treated as revoked on his joining at Regional Office at Sambalpur". The basic question is whether such an order can be held to be a valid order. The counter-affidavit filed by the respondents very clearly says at pages 4 and 5 that the competent authority is empowered to change the Headquarters of the Government servant in the interest of service. In the instant case it was considered necessary to change the headquarters of the applicant from Bhubaneswar to Sambalpur. The relevant para

reads as under :

"That in reply to para 4(6), 4(7) and 4(8) the respondents submit that the competent authority is empowered to change the headquarters of the Government servant in the interest of service. In the instant case, it was considered necessary to change headquarters of the applicant from Bhubaneswar to Sambalpur and accordingly the order was issued vide Memo No. ST/s-3/86 dated 23.8.1995 (Annexure-4 of the application). The order of revocation is not conditional. Rather the order dated 23.8.1995 (Annexure-4 of the application) clearly depicts that the order of suspension will be treated as revoked on his joining at Regional Office. Hence the revocation order is effective from the date of joining of the applicant."

4. It appears to me that the respondents have clearly not understood the purpose and import of suspension. While under suspension, an employee is debarred from any privilege of executing the responsibilities of an office or enjoyment of an income for discharging the duties. It is a temporary deprivation. He ceases to exercise the powers and discharge the duties for the time being. It must be remembered that suspension of an employee is not a punishment. It is a prelude to proper proceedings. Where charges have been framed and the charges are so serious and grave in nature that the continuance of the delinquent officer in service may not be justified in the public interest then suspension is resorted to and continued. In the present case the order of transfer is bad in law. It shows no application of mind. There are specific guidelines for revocation

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of suspension. If the disciplinary authority feels that there is an undue delay in the conclusion of the disciplinary proceedings or a long-time is taken in the conclusion of criminal investigation coupled with likelihood of evidence being tampered with or no enquiry is undertaken at all for a very long period or not even a charge-sheet was issued after suspension, then a suspension is revoked. Revocation is an act of judicially considering the various facts and circumstances of a particular case. There is no meaning or method in a conditional revocation coupled with a transfer. It is strange logic to say that suspension is revoked on the applicant joining a particular place on transfer. I take it that the suspension order has been revoked. There is no conditional revocation. Either you revoke the suspension order or you do not revoke. You revoke the suspension without the condition of transfer. It shows an undue belligerence against the applicant when revocation has been coupled with the transfer. The counter-affidavit speaks of change of headquarters. This is certainly an after-thought. I take it, therefore, that there has been a decision to revoke the suspension. When the applicant is not supposed to be in duty there is no question of transfer. If it is a mere case of change of headquarters, Annexures-4 and 5 should have stated so. Annexures-4 and 5 are

bad and illegal orders. They deserve to be quashed.

5. With regard to transfer, the respondents can go through the guidelines of the Ministry of Personnel which is Annexure-7 at page 21. It lays down that in the case of holders of Group C or D posts, who have been appointed on regional basis and who are physically handicapped such persons may be given postings as far as possible in their native places within their region. It is also stated that the requests of physically handicapped employees for transfer to a nearby place or native place may also be given preference.

6. This Original Application is against the order of transfer and I treat it so and dispose it of as **such** because the suspension order is redundant and after revocation did not exist. Revocation of suspension has nothing to do with the joining at a particular place. The condition is ex-facie unnecessary, irrelevant and onerous, since revocation cannot be conditional. Within 15 (Fifteen) days from the date of receipt of this order, respondents may go through the guidelines of the Ministry of Personnel and decide whether to keep the applicant in Bhubaneswar or to transfer him to anyother particular place. They shall again formulate an order of transfer on the basis of these guidelines.

The application is allowed. No costs.

Manasimohan Singh
(N. SAHU) 17/5796
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//