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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A. No. 409 of 1996

Cuttack, this the 31st day of July, 1996

Corum :

1. Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
2. Hon'ble Mr. N. Sahu, Administrative Member

Sri Subal Charan Khatua, aged about 41 years, s/o. Sri Brundaban Khatua, working as Wireless Operator, Alipingal, E.R. Division, Central Water Commission, Bhubaneswar. **Applicant**

By the Advocate - **Mr. Ganeswar Rath**

Versus

1. Union of India, represented by its Chairman, Central Water Commission, Sewa Bhawan, R.K. Puram, New Delhi-110066.
2. Superintending Engineer, Hydrological Observation Circle, 25-R, Behind Maharshi College of Natural Law, P.O. Saheed Nagar, Bhubaneswar - 751 007.
3. Executive Engineers, Eastern Rivers Division, Central Water Commission, Plot No. A-13 & 14, Saheed Nagar, P.O. Vanibihar, Bhubaneswar-4.
4. Deputy Director, Office of the Chief Engineer, Mahanadi and Eastern Rivers, Central Water Commission, Bhubaneswar. **Respondents**

By the Advocate - **Mr. Akhaya Kumar Mishra**

Heard on : 24.6.1996

O R D E R

A.K. Chatterjee, VC

The applicant working as Wireless Operator at Alipingal under Eastern Rivers Division of Central Water Commission has been transferred to Basantapur under Mahanadi Division by the impugned order dated 7.6.96 under the signature of the Deputy Director in the office of the Chief Engineer, Mahanadi and Eastern Rivers Division, which is sought

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to be quashed in this application on the ground that it is opposed to the transfer policy under which no Group 'C' or Group 'D' personnel should be transferred. This policy also requires that an employee with longer stay should be transferred before those with shorter stay, which has not been followed in the instant case as the applicant has been transferred in preference to three others, who were in the same Division longer than the applicant. The wife of the applicant happens to be a teacher in a School near Alipingal and far off from Basantapur, which was also taken as a ground to challenge the transfer order as the professed policy of the Government was that the husband and the wife should be posted at the same place or as near to it as possible. It was also contended that the applicant being a member of the Executive Body of the Association and nominated as a protected workman, he should not have been transferred. The order of transfer itself was said to be illegal since it was made by the Deputy Director, who was not competent to transfer the applicant.

2. The respondents in the Counter contend that the transfer was made with prior approval of the Chief Engineer and he has been transferred after a stay at Alipingal for about 8½ years as it became unavoidable for administrative exigencies in public interest in order to facilitate some similarly placed employees and give them the same opportunity which the applicant had enjoyed all these years. Of the three employees named by the applicant in his application who were supposed to be longer stayees, it was pointed out that considered site-wise, only one of them, a handicapped person has slightly longer stay than the applicant. Regarding supposed immunity from transfer because of the applicant's membership of Executive Body of the Association, the defence contention

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was that according to the Office Memorandum dated 22.9.81 of the Department of Personnel & Training, the facility relates only to the Executive Committee members of recognised main Association or Union and not available to such office bearers of Branch Unions/Units.

3. The respondents have also filed a Misc Application along with the counter to vacate an interim order made by this Bench on 15.6.96 staying the operation of the impugned transfer order unless the applicant had already relieved. We were told at the time of hearing on 24.6.96 that the applicant had not been relieved till then.

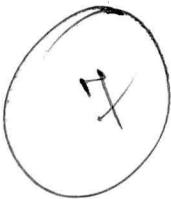
4. The applicant has filed a rejoinder mostly repeating and reiterating the statements already made by him in the O.A.

5. We have heard the 1st Counsel for both the parties and perused the records before us.

6. To take up the last point first namely the competence of the authority making the transfer order, the 1st Counsel for the respondents has produced before us the relevant file showing that the transfer order was approved by the Chief Engineer, who was no doubt competent to do so. Thus, it is found that the transfer was actually made by the Chief Engineer, but the order was issued under the signature of the Deputy Director. Therefore, this ground taken by the applicant has no merit.

7. The applicant's contention is that he being an Executive Body member of the Association should not have been transferred, has also been effectively countered by the respondents by placing reliance on the Office Memorandum of the Department of Personnel & Training dated 22.9.81. It was nobody's case that the applicant was a member of the Executive Committee of

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the main Association. Thus, this ground also fails.

8. The applicant contends that his wife being employed as a Teacher in a school near Alipingal, he should not have been transferred, which would disrupt the family life being opposed to the professed policy of the Government. No doubt, every employer should endeavour to allow a couple to live at or near the same place, but this is not to mean that they can claim to remain posted as such for all time to come. In fact, it was on this ground that the applicant was transferred to Alipingal from Basantapur some $8\frac{1}{2}$ years back and all these years, he was posted near the place of posting of his wife. As the applicant is liable to transfer, it is just possible that he may for sometime have to live separately from his wife, however, unfortunate it may be, if it is necessary for administrative requirements and public interest. The respondents have said that the transfer of the applicant had become necessary to facilitate the transfer of one of his colleagues on the same ~~principle~~. This, according to the Ld. Counsel for the applicant, cannot be regarded as interest of public service as it benefits only some other employee. We are unable to share this argument because the Administration is in duty bound to consider the needs of all the employees with equal fairness as per the policy of the Government and administration of cadre to maintain a balance between the needs of different employees should be regarded as essential in the interest of public service and any order made to secure such purpose should be held necessary for administrative requirements. Therefore, periodical transfer of employees, in such circumstances, must be regarded as in public interest and the transfer order in question cannot be struck down on the ground under consideration.

9. The applicant has contended that there are three employees, who had longer stay than the applicant and the respondents' case in this regard seems to be that even though they may be posted in the same Division for a period longer than the applicant, still considered sitewise, only one of them, a handicapped person, had a slightly longer stay than the applicant. In view of the clarification made by the respondents, we are unable to hold that all the three persons named in the application were longer stayees than the applicant. It is true that the handicapped employee has stayed at the same place little longer than the applicant, but in view of his physical condition, if he was exempted from transfer, we do not consider it a ground to interfere atleast on this occasion. In the rejoinder, the applicant has also spoken about one Sh.S.K.Pattnaik, who has not been transferred ever since he joined the service in 1973. This contention having been raised for the first time in the rejoinder, the respondents had no opportunity to state the circumstance under which he was not disturbed since 1973,if at all the allegation in the rejoinder was true. This contention, therefore, does not further the case of the petitioner.

10. About the contention that a Group 'C' or a Group 'D' personnel cannot be transferred according to the policy of the Government, it may be stated that this is by no means an inflexible rule and it is quite permissible to transfer even such an employee for administrative requirements and in the interest of public service. As it has been shown that these conditions have been fulfilled in the present case, the transfer cannot be assailed on this ground.

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11. The applicant has also alleged malicious intention of the authorities in transferring him to Basantapur. Considering the facts and circumstances in which he has been transferred, we are unable to uphold this contention of the applicant. No reason has also been adduced why the authorities should have any malice against the applicant for which they might be keen to get rid of him from Alipingal.

12. In the rejoinder, it has been stated that there are some Wireless Stations in and around Bhubaneswar, such as Jenapur, Bhubaneswar and Naraj to which the applicant could have been transferred. As this fact has been stated for the first time in the rejoinder, the respondents ~~have~~ ^{had} no opportunity to counter the same. In the circumstances, we can only give a direction to the applicant to put in a representation after joining at Basantapur for his transfer to one such Station, which should be considered by the authorities subject to availability of vacancy and other relevant consideration.

13. We, therefore, dismiss this application with this direction that the applicant after joining at Basantapur may, if so advised, put in a representation for his transfer to Wireless Stations at Jenapur, Bhubaneswar and Naraj and if such a representation is given, the authorities should consider the same subject to availability of vacancy and other relevant factors. Interim order passed on 15.6.96 is vacated.

14. Misc Application No.423 of 1996 filed by the respondents for vacating the interim order passed on 15.6.1996 stands disposed of.

15. No order is made as to costs.

Manasimha Sahu
(N. Sahu) 31/7/96
Member(A)

Ab. Chatterjee
(A.K. Chatterjee)
Vice-Chairman