

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A. No. 410 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 Prafulla Kumar Sahani, aged about 43 years,
s/o. Late Dhaneswar Sahani, working as Wireless
Operator, At/P.O. Talcher, Dist. Angul 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-751007.
3. Executive Engineer, Eastern Rivers Divi-
sion, Central Water Commissioner, Plot
No.A-13 and 14, Saheed Nagar, P.O.Vanibihar,
Bhubaneswar-4, Dist : Khurda. 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 Talcher under Eastern Rivers Division, Central Water Commissioner has been transferred to Raipur under Mahanadi Division by the impugned order dt.7.6.96 under the signature of the Deputy Director of the office of the Chief Engineer, Mahanadi & Eastern Rivers Division, which is challenged, inter alia, on the ground that it is opposed to the transfer policy. This policy envisages that no

Group 'C' personnel, like the applicant, can be transferred and should it become unavoidable, the employees should be transferred in order of length of their stay at a station, the longest stayee being transferred first of all. The applicant contends that there are other Wireless Operators having longer stay than him, who have been spared. It was also urged that he was the President of the Association and nominated as a protected workman, which was also a reason why he should not have been transferred. The transfer order in question was also said to be illegal as the Deputy Director was incompetent to pass such an order. The applicant has also some domestic commitments like education of children and treatment of his old parents which will be upset if he has to move out of Talcher at the moment.

2. The respondents contend that the applicant is at his present place of posting i.e. at Site Talcher since last 22 years which was the longest among Wireless Operators in this station in his grade. He has been transferred within the Circle as a matter of routine to facilitate ^{the transfer of} similarly placed Group 'C' employees far away from their native place which was thus in accordance with the transfer policy and in public interest. It was stated that the applicant cannot claim any immunity from transfer on the ground of his being the President of the Union as under the Office Memorandum dt.22.9.81 of the Department of Personnel and Training of the Govt. of India, this facility relates only to recognised main Association/Union and cannot be extended to any Branch Union/Units of which the applicant may be a President. Regarding the alleged incompetence of the authority making the transfer, the case of the respondents was that the decision to transfer was taken by the Chief Engineer concerned, who was quite competent to do so and the Deputy Director only conveyed the order. The transfer, it is also contended, could not

cause any domestic problem as there is ample scope for education and treatment at Raipur.

3. The respondents have also filed a Misc. Application simultaneously with the counter to vacate an interim order made on 15.6.96, whereby the impugned order was stayed till 24.6.96, when the application was listed for admission hearing unless the applicant was already relieved in the meantime. The Ld. Counsel for the respondents had informed us at the time of hearing on 24.6.96 that the applicant was not relieved till then.

4. The applicant has filed a rejoinder mostly repeating and reiterating the grounds he has taken in the O.A. and denying that he is in Talcher for the last 22 years.

5. We have heard the Ld. Counsel for the parties and gone through the application, the counter as well as the rejoinder together with the annexures.

6. Regarding the supposed incompetence of the authority passing the transfer order, the Ld. Counsel for the respondents, at the time of hearing, has produced before us the relevant file, which revealed that the transfer was approved by the Chief Engineer, who was undoubtedly competent to do so. Therefore, it appears that the Deputy Director had only communicated the order of transfer and as such, this ground taken by the applicant cannot be sustained.

7. The transfer policy does not contain any inflexible rule that a Group 'C' personnel cannot be transferred under any circumstances. The paramount consideration is the administrative requirements and exigencies of service and on such ground, a Group 'C' employee can certainly be transferred. A question has arisen whether the transfer of the applicant can be said to be in public interest, which, according to the respondents, had

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become unavoidable to facilitate the transfer of some other Wireless Operators, who are far away from their home and have to be brought back near it. The Ld. Counsel for the applicant has contended that this cannot be said to be in public interest but it was purely in the interest of the employees, who will be brought back near their home. Now some Wireless Operators are being brought back also in accordance with the transfer policy, which the Government is supposed to follow and, therefore, if the applicant has to make room for other employees, such transfer cannot but be regarded in exigencies of service and for administrative requirements and as such in public interest. In this situation, if the applicant is transferred as a part of chain of transfer, it cannot be questioned on the ground that it was not for public interest.

8. It appears that there is some controversy regarding length of stay of the applicant at Talcher. In the application, the applicant has named three other Operators namely, S/Shri R.S. Pattnaik, P.N.Samantray and J.P.Basa, who were said to be staying for more than 20 years in a station, while the respondents in their counter have said that the applicant is working at Site Talcher for last 22 years. In the rejoinder, the applicant states that he is continuing at Talcher only since July, 1984 and regarding Sri R.S. Pattnaik, about whom he has mentioned in the O.A., it has been clarified that he was previously at Site Jenapur from May, 1975 to June, 1994 and thereafter, he has been transferred to Champua under the same Sub-Division. Thus, it does not appear that Sri R.S. Pattnaik is staying for more than 20 years in a station as urged in the O.A. Regarding Sri P.N. Samantray, it has been clarified in the counter that he is a handicapped person and is working since 21.6.85 at site Nimapara, while Sri J.P. Basa is at

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site Baripada only since March, 1989. Therefore, atleast so far as three Operators named in the application, it does not appear that ^{anybody} ~~nobody~~ has stayed at their respective site since before the applicant had joined at Talcher, even if it is assumed that he did so in 1984, as contended by him, which is ofcourse disputed by the respondents, according to whom, he is posted at Talcher for the last 22 years. In the rejoinder, the applicant has disclosed the name of Sri S.K.Pattnaik about whom it has been said that he was never posted outside Orissa since he joined the service in 1973, while the applicant ~~who~~ was initially posted at Asansol. The case of Sri S.K.Pattnaik having been raised for the first time in the rejoinder, the respondents had no opportunity to counter the same and, therefore, it must be left out of consideration. Further it may not be quite relevant because even if it is assumed that he was never posted outside Orissa, still it would not follow that he had longer stay than the applicant at any particular station.

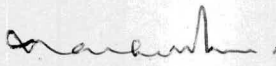
9. We do not find any merit in the contention of the applicant that he should not have been transferred as he happens to be the President of an Employees' Association because, as pointed out by the Id.Counsel for the respondents, it is only the office bearers of the main Association/Union, who can claim such privilege on the basis of the Office Memorandum dt.22.9.81 of the Department of Personnel & Training, Govt. of India, which has no application to Branch Union or Association of which the applicant may be a President.

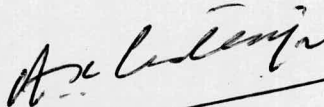
10. A transfer may sometimes bring about some dislocation of personal affairs, such as education etc., but it is for the employee, who has the transfer liability, to manage such problems, however, unfortunate it may be. As the transfer order has been

found to be unassailable, the Tribunal is unable to interfere upon such ground alone. It has also been pertinently pointed out by the respondents that there are enough facilities for treatment at Raipur and also for education of children, which ofcourse the Id.Counsel for the applicant has contested that the education in Oriya Medium is not available at the place where he has been transferred ^{but} in view of All-India transfer liability the applicant has to sort out such problems.

11. For the reasons stated above, we see no merit in this application, which is unworthy of admission and it is rejected at the stage. The interim order made on 15.6.96 is vacated and the M.A.No.422 of 1996 filed by the respondents on 21.6.96 is accordingly disposed of.

12. No order is made as to costs.


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


(A.K. Chatterjee)
Vice-Chairman