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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.487 OF 1996
Cuttack, this the 9th day of September, 1996

Sri Janardan Sathua Applicant

-vrs-

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 *No.* Central Administrative Tribunal or not?

N. SAHU
(N. SAHU)
MEMBER (ADMINISTRATIVE)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.487 OF 1996
Cuttack, this the 9th day of September, 1996

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE)

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Sri Janardan Sathua,
s/o late Shyam Sundar Sathua,
Inspector of Income Tax,
Office of the Deputy Commissioner
of Income Tax, Cuttack Range,
Cuttack,
At: Arunodaya Market Building,
Link Road, Cuttack-9

..... Applicant

By the Advocates

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M/s R.K.Rath,
Siddhartha Ray &
S.Dey.

-versus-

1. Union of India,
represented through
Chief Commissioner of Income Tax,
Bihar, Patna
2. Commissioner of Income Tax,
Orissa, 15-Udayan Marg,
Bhubaneswar
3. Deputy Commissioner of Income Tax,
Cuttack Range, Cuttack

Respondents

By the Advocate

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Mr.B.K.Bal,
Addl.Standing Counsel.

ORDER

This is an application to quash the order

of transfer bearing No. AD-III-3/96-97 dated 11.6.1996 vide Annexure-3, transferring the applicant from Cuttack to Sambalpur

(2)

and also to quash the order of Commissioner dated 3.7.1996, rejecting the representation of the applicant against the said transfer. The main ground against the transfer relates to the personal and family problems of the applicant. He states that his eldest son aged about 19 years is mentally handicapped and studies at Ramadevi Sisu Bihar, Cuttack, specially designed for imparting education to mentally and physically handicapped children. The applicant's wife is a patient of peptic ulcer. He relies on a directive of the Government of India No.A.D.14017/41/90 Estt.(RR) dated 15.2.1991 issued by the Ministry of Personnel, Public Grievance & Pensions wherein even if it is not possible in all cases to post the parent of such handicapped child at a place of choice, yet the Department is directed to take sympathetic view on merits of each case and accommodate such request for posting to the extent possible. The applicant's second son, it is stated, will appear in CBSE Course and the applicant himself has orthopaedic problems. He filed a representation before the transferring authority. The representation was rejected and hence this Original Application.

2. In the counter-affidavit, it is stated that Ramadevi Sisu Bihar School is not the only school of its kind equipped with facilities for training mentally retarded children. There are two such other schools, viz. one at Sambalpur and another at Burla. The applicant has been transferred to Sambalpur where such facility is available. With regard to the ailments of the applicant and his wife, it is stated that there is a Medical College Hospital at Burla - adjacent to Sambalpur.

The ~~promotion~~^{transfer} of the applicant has been stated to be on the basis

of the guidelines. Guideline-1 states "on promotion, persons should normally be transferred from the place he is working to another place. If the promotion comes in the middle of the year, the transfer may be effected in the next annual general transfer unless the official finds it convenient to be transferred immediately". The applicant was promoted as Inspector of Income Tax on 30.11.1995. Although he was due for transfer on promotion, he was allowed to continue till the next annual general transfer. It is submitted on behalf of the Respondents that they took appropriate care to see that the education of the children should not suffer and they waited for the next academic year to commence before effecting the transfer. It is stated that the applicant stayed at Cuttack for 19 years of which there is a continuous stay of 10 years before he was transferred. Thus out of a total service period of 26 years, the applicant stayed at Cuttack for 19½ years. As there is an established Medical College with reputed Doctors at Burla and also good medical facilities at Sambalpur, the applicant has been transferred to Sambalpur after a careful consideration of his problems.

3. The applicant also filed an additional affidavit. It is stated that the transfer violated the guideline: "official willing to continue in the non-field office should not be disturbed". The most important point made by the applicant in the additional affidavit is that there are 13 officers who stayed at Cuttack for periods longer than the applicant. His grievance is that none of these persons has been disturbed because of "use of their influence". In the face of this affidavit, the Respondents were asked to refute the same.

4. In the additional counter-affidavit, it is stated that at the time of making the general transfers, the applicant's case was not only considered from the point of view of his promotion, but also his total stay and continuous stay at Cuttack. An explanation has been given as to how and why each of the candidates mentioned in the applicant's additional affidavit has been retained. With most of the officials, it is stated that their total stay is of a shorter span than that of the applicant. With regard to one Ramesh Chandra Das whose total stay was 23 years at Cuttack, it is stated that the said official did not complete three years during his last spell of stay at Cuttack. Against the applicant's denial of the existence of the mentally retarded school, the Respondents have reiterated that there is a school for mentally retarded children at Sambalpur, viz. "Veer Surendra Sai Institute For Mentally Handicapped, Social Welfare Centre", Sambalpur, of which the Collector is the Chairman and to which the Commissioner has granted Registration u/s.12(A) of the I.T.Act. With regard to the directive of the Ministry of P.P.G. relating to posting of Government employees who have mentally retarded children, it is stated that it is a guideline to be followed and not a statutory rule. In the case of the applicant he has been accommodated at a place only where there are such facilities. Besides this, Sambalpur is a place having good educational and medical facilities. The applicant having been relieved on 8.7.1996, and having drawn Transfer T.A. and advance pay, it is submitted by Sri B.K.Bal, learned Additional Standing Counsel that there is absolutely no justification in

this application and it deserves to be summarily dismissed.

5. Learned counsel Shri Bal has drawn my attention to the decision of the Supreme Court in Union of India v. S.L.Abas AIR 1993 SC 2444 wherein the following principles are laid down:

- (1) Not following instructions/guidelines would not be sufficient to quash the order as mala fide;
- (2) The transferring authority is not obliged to justify a transfer by adducing reasons therefor;
- (3) Guideline requiring husband and wife to be posted in the same station is not mandatory;
- (4) Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it; and
- (5) The C.A.T. not being the appellate authority, cannot substitute its own judgment for that of the authority competent to transfer.

6. Learned counsel for the applicant Shri R.K.Rath assailed the order of transfer on several grounds. He stated that the Department of Personnel & Training has issued the guidelines only with a view to help mentally retarded children who require special care and patience in the backdrop of an expensive and long treatment. He secondly stated that applicant's family medical problems compel compassion. He urged that there is no policy whatsoever of the Respondents. It is not a question of mathematical calculation of period of stay. If the applicant had stayed more by a few months than that of the ~~following~~ ^{named} ~~list~~ officials it does not ipso facto follow he should be transferred out.

It is not a mathematical compulsion to transfer the applicant and to retain others. As this is the most crucial point advanced by Shri Rath that there is virtually no transfer policy of the Respondents and that the transfer is by "a pick and choose method", I shall extract the reply of the Respondents:

"...In this over all scenario the contention of the applicant is discussed below case by case:

1. Sri T.L.N.Rao is working as an I.T.O. which is a different grade than that of the applicant and as such no comparison can be made between them.
2. Sri M.S.Jena although works in the same grade as that of the applicant he is posted in a different station and as such no comparison stands in this case as well.
3. In the other cases cited by the applicant a complete chart reflecting their total stay and period of continuous stay before annual general transfer along with remarks given below for the kind information and consideration of the Hon'ble Tribunal.

Name	Total stay	Continuous Remarks period of stay.	
Sri A.P.Mohapatra	17 Yrs*	9 Yrs +	As far as total period of stay at Cuttack is concerned both these officials have a shorter span than that of the applicant. As far as continuous stay is concerned both these officials have roughly equivalent span as that of the applicant. Hence vis-a-vis these 2 people the applicant was considered for transfer on the basis of longer period of total stay and more importantly because the applicant got his promotion to the grade of IIT.
Sri J.B.Behera	12 Yrs*	9 Yrs +	

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Sri A.K.Satpathy,	13 Yrs	5 Yrs	I
Sri Natabar Sahu	16 yrs	2 yrs +	I
Sri K.C.Sahu	17 Yrs+	8 yrs +	I
Sri Niranjan Padhi	9 yrs+	4 yrs	I
Sri K.C.Bhera	9 yrs+	5 yrs+	I
Sri A.Pani	7 yrs +	5 yrs+	I
Sri J.K.Samantray	13 yrs+	3 yrs+	I
Sri K.C.Mohanty	5 yrs	5 yrs	I

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All these officials have a shorter span than the applicant in respect of both the total period of stay as well as continuous stay at Cuttack.

Sri Ramesh Ch.Dash 23 yrs 2 yrs

Although Sri Dash has a longer span than the applicant and also got his promotion along with the applicant has case was not considered for transfer for the simple reason that in his last spell of stay at Cuttack he had not even completed 3 yrs. Prior to that he was posted at a far off place like Bolangir. Hence another transfer within the short time of 2 years and few months would have caused genuine hardship to the official. There was also no administrative requirement to transfer him out as another vacancy at Sambalpur was filled by transferring one Sri J.B.Sahoo who was promoted to the grade of IIT and had a total period of stay at Cuttack of more than 24 years and continuously stay of about five years."

7. What Shri Rath says is that what was the justification for bringing Sri R.C.Dash back to Cuttack when he had stayed two decades there? What was the justification in retaining all these officers at their respective places? and why should the applicant be singled out? In all fairness it is stated by the counsel for the applicant that the applicant had no grievance against the long stay of others. What he pleads is that there is no justification

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in pointing a finger to his longer stay and what he pleads is that his personal problems of a handicapped child, ailing wife and personal orthopaedic problems have to be considered. The sensitivity accompanying the imparting education to a mentally retarded child in a particular atmosphere cannot be replicated in another place. A mentally retarded child requires a certain background, a certain atmosphere and this child having been accustomed to a particular method of teaching from 1988 cannot be disturbed and it is in this background the directions of the Ministry of Personnel need to be appreciated. A transfer is not a rule on thumb, it should be a rule of judgment. Shri Rath has cited a number of decisions to support his point of view where even the Apex Court had allowed the applicant to stay on account of personal illness or illness of a close relative. 1995(1) ATT 21 SC, 1988(3) SLR 347 SC, 1988(7) SLR 90. He stated that the rejection of the representation is not based on any reason. The counter-affidavit cannot be a substitute for giving reasons. A bare rejection has been judicially held to be an order without reasons. For that purpose, he cited AIR 1990 SC 1984, AIR 1978 SC 851 and AIR 1988 Calcutta 230. He urged that retaining people at Cuttack who have put in 17 years of total stay like A.P.Mohapatra, nearly 18 years (K.C.Sahu) and 23 years in the case of Ramesh Chandra Das and transferring the applicant albeit with a total stay of 19 years cannot be justified either on humanitarian ground or on account of administrative expediency.

8. I have carefully considered the submissions of rival counsels. By citing the stay at Cuttack of other officials, the applicant wants to show how he has been discriminated against and

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how his transfer is an illustration of hostile discrimination and therefore, there is mala fide involved. I do not think that the applicant can rely on other examples of overstay to defend his case. His case of transfer has to be judged on its own merits. Admittedly the applicant stayed for over 19 years at Cuttack and has continuous stay for over ten years. Such long periods of stay on the face of it justify a transfer and a transfer, if made, has to be complied with. This is a transfer on promotion and to Western Region. Respondent No.2, the Commissioner of Income Tax (transferring authority) has taken care to choose a place where the applicant's son would get appropriate treatment. He has transferred him to a place where there is an established Medical College and the service of experienced medical doctors is available. He has transferred him to Western Region, another area where there is a deficiency of candidates. It cannot be said that the applicant's transfer is vitiated by mala fides. The order of transfer often causes difficulty and dislocation of family set-up of the employee but it cannot be struck down on that score alone. In a transferable post an order of transfer is a normal consequence. There must be a firm foundation of facts to draw reasonable inference of mala fide action. In this case, the applicant failed to show that there was an oblique motive in ordering the transfer or there is personal vendetta. That is not his case at all. Some Inspectors might have been retained for long at a particular place, but the applicant's stay is the longest and he has been promoted. The applicant never showed instances of promoted officers with longest stay retained at a particular place in the grade of Inspector. To transfer a person after 10 long years of stay from a particular place cannot be questioned even if there are others who have stayed longer periods.

9. The Supreme Court has held in State of Madhya Pradesh v. S.S.Kaurab, AIR 1995 SC 1056 that hardship caused to the employee from a transfer cannot be a ground for judicial review of the transfer order. In that case the transferee's wife had committed suicide leaving three children and the transferee claimed that he would suffer extreme hardship if he had to work in a new place of posting in a tribal area. Rejecting the contention, the Apex Court held that the judiciary cannot adjudicate on the extent of hardship. It would be for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration. In AIR 1995 SC 813 it is held that in the absence of strong and compelling grounds rendering the transfer order improper and unjustified, such an order is held not subject to judicial review. The holder of a transferable post cannot insist on being posted at a particular place. There is no justification, in the absence of a legal or statutory right, to invoke judicial review against his transfer (29 ATC 329 SC). In V.N.Prasad's case 29 ATC 676, Supreme Court held that there is a presumption of bona fides in a transfer order and it also held that there has to be a strong and convincing evidence to establish mala fides.

10. This impugned transfer has been made in the normal course of exigencies of service following a guideline on the applicant's promotion. Care has been taken to transfer him to a place where medical facilities are available for the treatment of himself, his wife and also for the treatment of his son. The Commissioner of Income Tax may have compelling reasons not to disturb a particular Inspector. At any rate, stay at a particular

place is not the sole ground of transfer even in the revised transfer guidelines. I would, therefore, hold that this Court finds no justification to interfere with the order of transfer. The application is dismissed. The applicant shall comply with the order and work at the place of posting at least for a year. If after any year, the applicant finds that the treatment of his mentally retarded child is not moving along on satisfactory lines at the new place of posting and if the authorities in that institution certify that his continuance in that institution is not congenial to the development of the child's personality, he may approach the Commissioner of Income Tax with a representation for consideration of his case for re-transfer back to Cuttack. The Department shall consider such a representation with all sympathy. By this, they will not only comply with the guidelines of the Ministry of P.P.G., it will be an appropriate homage to the year of the HANDICAPPED CHILD.

Narasimha Sahu
(N.SAHU) 9/9/16
MEMBER (ADMINISTRATIVE)