

6

7

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. NO. 53 of 1996

Cuttack this the 13th day of March, 1996.

SHRI BINOD KUMAR MISHRA

...

APPLICANT

VERSUS

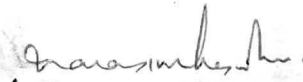
UNION OF INDIA & OTHERS.

...

RESPONDENTS

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No,
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not? No


(N. SAHU)
MEMBER (ADMINISTRATIVE)

7

8

CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 53 of 1996

Cuttack this the 13th day of March, 1996

C O R A M:

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

...

Shri Binod Kumar Mishra,
aged about 38 years, son
of Khetrabasi Pani, Plot No. 50,
Madhusudan Nagar, Bhubaneswar,
at present working as Telecom
District Manager,
Berhampur, At/PO/Dist: Ganjam

...

Applicant

By the Advocate:

M/s. A. K. Mishra
A. K. Guru
J. Sengupta
B. B. Acharya
D. K. Panda

1. Union of India represented
through its Secretary, Depart-
ment of Telecom, Ministry of
Communications, Sanchar Bhawan,
Ashoka Road, New Delhi
2. Chief General Manager,
Telecommunications,
Orissa Circle, Bhubaneswar
3. Shri A. Mohanty,
Director Installation
Office of the Telecom Circle
Bhubaneswar (O/O.C.G.M.T.,
Telecom Circle, Bhubaneswar)

By the Advocate:

For Respondent Mr. Ashok Mohanty,
1 and 2 Sr. Standing Counsel (Central)

For Respondent M/s. G. A. R. Dora
No. 3 V. Narasingh
J. K. Lenka

...

O R D E R

MR. N. SAHU, MEMBER (ADMN): This application under Section 19 of the
Administrative Tribunals Act, 1985, filed by the applicant

challenges the communication made on 16.1.1996, which is Annexure-5 to the application, by which Respondent 3, Shri A.Mohanty, Director Installation, Office of the Telecom Circle, Bhubaneswar has been nominated for posting as Telecom District Manager, Berhampur Circle, Berhampur. The grievance of the applicant is that he should have been preferred. This communication is a direction given by the Department of Telecommunications, Sanchar Bhawan, New Delhi, to the Chief General Manager, Bhubaneswar. It states that Shri A.Mohanty, Director Installation should be posted as Telecom District Manager at Berhampur on regular basis and the incumbent at Berhampur, the applicant, "may be given some other station of his choice as far as possible."

2. The back ground facts leading to the present dispute briefly are that the applicant was the Telecom District Engineer at Berhampur since July, 1993. The applicant, Respondent No.3, Shri A.Mohanty and one Shri P.K.Hota, were promoted to Junior Administrative Grade on 29.5.1995. Berhampur Telecom District was upgraded on 25.4.1995 and was to be headed by a Telecom District Manager. As the applicant worked as T.D.E. since July, 1993, he took over charge as T.D.M. on 2.6.1995 after a brief interlude of foreign training during which period respondent No.3 was in-charge. After his return from foreign training the applicant rejoined his former post as Telecom District Manager, Berhampur and Respondent No.3 was transferred and

posted as Director (Installation), Bhubaneswar, during September, 1995. One undisputed fact is that the Honourable Minister of State for Mines Sri Giridhar Gomango wrote a letter dated 28.10.1995 to Shri Sukh Ram, Hon'ble Minister of State (IC) for Communications recommending the transfer of Respondent No.3 Shri A. Mohanty as T.D.M., Berhampur Circle, Berhampur. Shri Mohanty, according to the Minister, worked as T.D.E. at Koraput during the period 1989 to 1992 when he himself was in charge of Telecommunications. Shri Mohanty's performance impressed the Minister. He therefore, requested that Shri Mohanty should be posted at Berhampur. It is stated by Shri G. R. Dora, learned counsel appearing on behalf of Shri Mohanty that during the latter's tenure of three years, he converted all the telephone exchanges to Electronic and provided STD connections to all ~~these~~ exchanges except one. It is further averred that ~~the~~ Koraput was the first Telecom District in the country to have STD facilities in all exchanges. It is for this reason, the Minister was impressed about Shri Mohanty's performance.

Presumably on the basis of this recommendation, the Telecommunications Ministry directed the transfer through the impugned letter, Annexure-5.

3. The learned counsel for the applicant Mr. Aswini Kumar Mishra, has filed a communication dated 15.11.1995 addressed on behalf of the Chief General Manager, Telecommunications, Orissa to the Telecom Department,

haswini

3-4-

New Delhi. Obviously the recommendation to post post Shri Mohanty of the Hon'ble Minister for Mines was examined and the Department of Telecommunications elicited the views of the Chief General Manager, Telecommunications, Orissa on this proposal. The Chief General Manager, Telecommunications, Orissa, Bhubaneswar recommended the retention of the applicant stating that Shri Mohanty is a transmission trained officer and very well suited for the post of transmission installation whereas Shri B.K.Mishra, the applicant, is a Switching trained officer more suited for T.D.M. Post. After obtaining the comments from the C.G.M.T., Bhubaneswar, the Department of Telecommunications, New Delhi, arrived at a decision to transfer Respondent No.3 to Berhampur which is impugned before me.

4. The learned counsel for the applicant Shri Mishra has taken me through the background of this case as mentioned above and laid particular emphasis on the training aspects of the applicant and Respondent 3. He further stated that Respondent No.1 has been influenced by the recommendations of the political executive. Mr.Mishra brought to my notice the ailment of the applicant's father and his son's study in a Central School for his retention at Berhampur. He cited the decision of the Orissa Administrative Tribunal reported in 1993 (2) ATT (OAT page 430) (Sanyasi Bhuyan and Bidyasagar Biswal vs. Director of

Handwritten signature

Elementary Education, Orissa, Bhubaneswar and others).

He relied on para-3 which is extracted herein below :

".... A Minister who is representative of the people commits no mistake bringing it to the notice of the appointing authority for transfer and posting of a Government servant for any administrative exigency or public interest. The transferring authority thereafter is required to look into the same and apply its mind as to whether the transfer is required for any administrative exigency or public interest and once he is satisfied that such a transfer is required in administrative exigency, it will be always open to him to pass necessary orders as deemed fit and proper. But in the instant case as would be seen from the impugned order, the District Inspector of Schools, Ganjam Circle, Berhampur transferred 11 teachers from one station to another without any application of mind but only for the desire of two Ministers desire of a Minister may be at times highly undesirable and persons incharge of administration may be victims of such undesirable desire of the politicians and in such a case there will be serious repurcussion on administration resulting in chaos and citizens are bound to loose their faith from the Government".

The next case relied by Shri Mishra, learned counsel for the applicant is that of the High Court of Orissa, Cuttack reported in 1992 (2) ATT(H.C.) 457 (Trinath Rath vs. State of Orissa and others). The Orissa High Court dismissed the application impugning the transfer order. In the course of the decision Their Lordships have laid down the following principle of law :

Handwritten signature

-5-

"An order of transfer not passed by the competent authority but by some other authority exercising extra-constitutional power is also liable to be struck down. Under Article 166(3) of the Constitution, the Governor makes rules for the convenient transaction of the business of the Government of the State and for the allocation among ministers of the said business. In accordance with the said provision in the Constitution Rules of Business have been framed by the Governor allocating the business of the Government of the State amongst the different Ministers and no Minister is authorised to discharge the functions and duties allocated to some other Minister. Ministers and MLAs being the representatives of the people undoubtedly have a duty to listen to the grievances of the people of their constituencies and if they are satisfied with the grievances, they can merely recommend those grievances to the appropriate authority for redressal. But they cannot pass any order if the matter in question does not come within their power under the Rules of Business".

On the basis of the above principles, the learned counsel for the petitioner urged that impugned Annexure-5 be cancelled.

5. Learned Counsel for the petitioner Mr. Mishra has further brought to my notice Rule-20 of CCS Conduct Rules which states that no Government servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his

hasem

- 7 -

service under Government. In this connection, the relevant instructions of Government of India are also brought to my notice. Para-2 of the relevant instructions dated 8th August, 1977 has been read over by Shri Mishra in the course of his arguments. This para deserves to be quoted.

" 2. Any high dignitary of Member of parliament normally sponsors the case of an individual Government servant only when he is approached or pressed to do so. If, therefore, any reference is received on behalf of a Government servant from dignitary/Member of Parliament, it would be assumed that it has been taken up only at the instance of the Government servant and action will be taken against him for violation of Rule-20 and instructions issued thereunder".

6. This is no doubt an important argument. But Shri Dora learned counsel for Respondent No.3 has made it very clear that Respondent No.3 ^{never minister} represented for a transfer to Berhampur. He also made it clear that he never approached the Minister for a recommendation. In my view a mere recommendation by a Minister in favour of a particular official particularly when that Minister was the presiding political executive in the Department and conversant with the work of a particular officer/

Official can not be called into question. In view of this law laid down by the Orissa High Court, I do not think that a mere recommendation per se would ipsofacto indicate undue influence and such an act would be viewed as misconduct of the Government servant and that would amount to violation of Rule-20. Para-2 of the instructions cited above is a rather broad statement which does not necessarily follow from Rule-20. Learned Senior Standing Counsel has stated that one can take judicial note of senior officers in the Government of India naming a particular officer for a particular post. These are very normal occurrences. Some official who is known to have performed creditably or has shown a particular aptitude is preferred or named. There is nothing improper about it. If this is the right one concedes to a Senior Government Servant, then such a right of selection should be extended to the political executive as well. It is not unusual to notice the Minister wanting a particular officer to manage a particular work. These are done purely in the administrative interest and in the exigency of public service. I would, therefore, hold that para-2 of the instructions dated 8.8.1977 is not always a correct presumption and does not necessarily flow as a presumption from Rule-20. The real test in these matters

Remains in

15

16

-9-

is laid down by Hon'ble Mr. Justice G.B. Pattnaik in Trinath Rath's case and the paragraph extracted above should be the guiding principle.

7. Learned Counsel for the Respondent No.3, Mr. Dora urged that a recommendation by Shri Gamango made as the former Minister of Telecommunications who had personal knowledge of the work of Respondent No.3 is not illegal. He stated that the Ministry of Telecom. Department has taken its own independent decision after taking into consideration all relevant aspects in public interest before instructing the Chief General Manager, Telecommunications to post a particular officer in a particular station. He rejected the allegation of mala fide. He stated that it is settled Law of the Hon'ble Supreme Court that an order of transfer can not be interfered with unless it violates the statutory rules or is actuated by mala fides. It was urged by Shri Dora that even after transfer of the applicant, he can retain his quarters for two months at Berhampur and at any rate the academic session of the child has probably come to a close. With regard to father's illness, he stated that this plea did not come in the way of the applicant for Foreign Training. The posting of a particular officer

-10-

at a particular place is an administrative decision and can not be the subject matter of judicial review. The applicant had worked at Berhampur for about two years. He also mentioned that Annexure-5 is an inter departmental communication and as no posting order has been issued, the Original Application itself is premature. At any rate, it is incorrect to say that the petitioner has been disturbed within a period of six months. It is settled law that one can not claim to continue at a particular post for any length of time. With regard to the claim of specialisation Shri Dora stated that it is only a functional difference and the applicant having been promoted to Junior Administrative Grade, can perform switching function as effectively as transmission functions. Once a Junior Administrative Grade Officer has basic background and experience, he can effectively monitor any of the functions in his Division. Switching and transmission are interchangeable functions at the managerial level.

8. Shri Ashok Mohanty learned Senior Standing Counsel (Central) has supported the stand taken by Shri Dora. Shri Mohanty had forcefully argued that the Ministry of Communications is not unduly influenced by

-11-

the recommendations of the Honourable Minister of Mines. It is one of the inputs. He took me through the counter filed by the Secretary, Ministry of Telecommunications wherein it was averred that the telecommunication Department has taken independent decision after going through all the material facts. It was not as though the Minister passed orders on the recommendation letter of Shri Gamango peremptorily. On the contrary, the Ministry officials sought the views of the C.G.M.T. in the field on the proposal and examined the proposal before issuing the impugned direction.

9. I have carefully considered the rival submissions and I am convinced that this petition can not succeed . It has no merit. I shall take the law on the subject as laid down by the Hon'ble Orissa High Court through Hon'ble Mr. Justice G.B.Pattnaik.

10. If we examine this in the light of the guidelines laid down by the Orissa High Court, we find that the tests are fulfilled. It is admitted by all parties that a mere recommendation for a posting of Respondent No.3 is per se not objectionable. More so when

Handwritten: Inside

-12-

Hon'ble Minister Shri Gamango was the Telecom Minister during the three years tenure of Respondent No.3 at Koraput. Shri Gamango was impressed by his performance and he considered that it would be in the public interest to post him at Berhampur, Orissa. As Shri Dora points out that the first STD transmission of all exchanges in Koraput District was a matter of record and was also discussed in Parliament. On that basis presumably the Minister recommended the case. Be that as it may, even on the basis of the letter filed by the applicant's counsel, Annexure-6 dated 15.11.1995, in the court on 1.3.1996 on the date of hearing, with copies to either counsel, it clearly shows that views of the C.G.M.T. Bhubaneswar were elicited by the Ministry of Communication on Shri Gamango's suggestion about the transfer of the Respondent No.3. It shows that the Department of Communications has considered the suggestion at various levels and arrived at an administrative decision to post Respondent No.3 at Berhampur. This is not the decision of the Minister. This is the decision of the Department arrived at after careful examination. It is an independent decision of the Department and the documents filed by the applicant himself corroborates the averments made by the Secretary, Communication, in the counter affidavit for this purpose.

-13-

11. On this ground alone, if not more, the petition deserves to be dismissed.

12. The settled law is that a mere allegation of mala fide would be of no assistance to the applicant. An individual has to be named. There should be adequate material to justify the allegation. The powers of a Tribunal to interfere in the administrative matters regarding transfer of an employee has been restricted by the Apex Court in (1) A.I.R. 1989 SC 1433 ; (2) 1989 (2) J.T. Vol.3 SC 131; (3) AIR 1992 SC (SCC) 306. In the case of S.L. Abas Vs. Union of India and others, it is laid down that employees have no right to continue at a particular station indefinitely having taken all India service liability. In the last two citations, the case related the court's refusal to interfere in the transfer of Government servant when their wives were working in the same stations. Law is well settled that transfer is an incident of service and no Government servant has a legal right for being posted in a particular place and transfer from one place to another is a condition of service and the employee has no choice in the matter. Transfer from one place to another is necessary in the public interest and exigencies of administration. These are the principles laid down by the Honourable Supreme Court in A.I.R. 1989 SC 1433 and A.I.R. 1993 SC 2444.

13. The most important point is that the Department of Telecommunications directed the transfer of the applicant to any place of his choice as far as possible. This indeed is a very considerate concession. That apart the applicant, if aggrieved, has every right to represent against the transfer explaining his difficulties. I am surprised as to how the applicant came to possess an inter departmental communication. I agree with Shri Dora that without a transfer order and without exhausting the departmental remedy of representation, this petition itself is premature. I think there is absolutely no merit whatsoever in this petition. Hence dismissed. No costs.

Narasimha Sahu
(N. SAHU) 13/3/96
MEMBER (ADMINISTRATIVE)

KN Mohanty