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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 586 OF 1996  
Cuttack, this the 11<sup>th</sup> day of September, 1996

Sk. Fatchul Haque

....

Applicant

Vrs.


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 Tribunal or not? No.

  
(N. SAHU) 11/9/96  
MEMBER (ADMINISTRATIVE)

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CORAM:

HONOURABLE SHRI N.SAHU, MEMBER (ADMINISTRATIVE)

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Sk.Fatchul Haque,  
aged about 48 years,  
s/o late Sk.Izabul Haque,  
working as Sub-Divisional Officer,Telegraph  
(S.D.O.T.),  
At/P.O-Jajpur Town, Dist.Jajpur

By the Advocates - M/s Pradipta Mohanty,  
D.N.Mohapatra, &  
G.Sahu

-versus-

1. Union of India, represented by the  
Director of Telecommunication,  
New Delhi.
  2. Chief General Manager,  
Telecommunication, Orissa,  
Bhubaneswar, At/P.O-Bhubaneswar-751 001,  
District-Khurda
  3. Asst.General Manager (S&A),  
Office of the C.G.M.T., Orissa,  
Bhubaneswar-751 001
  4. B.B.Sethi, S.D.E.Dhenkanal,  
At/P.O/Dist.Dhenkanal
  5. Sri Digambar Kar, At/P.O-Ankula,  
P.O/Dist.Jajpur
  6. Telecom District Magistrate, Cuttack,  
15, Cantonment Road, Cuttack
- ... Respondents
- By the Advocate - Mr.Ashok Mohanty,  
Sr.Standing Counsel.

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O R D E R

N.SAHU, MEMBER (ADMN.)

In this application the applicant desires a direction from this Court for quashing Annexures 2 and 5. Annexure-2 is a transfer order dated 20.6.1996 transferring the applicant from his present posting as S.D.O.T, Jajpur Town to Cuttack as S.D.E(F/C). As soon as this order was passed, in O.A.No.448/96 the applicant prayed for quashing this order. At that time, he stated that after twenty-five years of service in Cuttack, by Annexure-1 he was transferred to Jajpur Town only fourteen months back. This Court directed that the representation dated 21.6.1996 submitted by him to the C.G.M.T., Bhubaneswar, should be disposed of. Annexure-5 is the order of rejection dated 31.7.1996. Learned counsel for the applicant, Shri P.Mohanty repeated that the applicant worked for about twenty-five years as J.E. and T.E.S., Group 'B'. His wife worked as an Assistant Teacher in a Government U.P.School in Jajpur Town and his old mother also stayed with her at Jajpur Town. He was transferred to Jajpur Town only fourteen months back. It is stated that Respondent No.4 on the verge of retirement does not desire to be posted at the place allotted to him as per the impugned transfer order. It is stated that the Department had retained a number of officials in the same places for longer periods. He cited the names of seven officials who were stated to be continuing at Berhampur and/or Cuttack for well over two decades. He mentioned the difficulties arising out of education of his children. He states that his performance during

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his tenure was impeccable. He states that he has been victimised by one Sri Digambar Kar, Member of the Telephone Advisory Committee because he could not comply with the latter's unjust demands. This is stated to be an off-season transfer.

2. Shri Pradipta Mohanty cited a number of decisions in support of his claim. He pointed out that no administrative exigency is visible in this transfer. In the case of Uma Shankar v. Union of India & ors (I(1990) ATLT (CAT) 473), C.A.T., Jodhpur Bench, held that the transfer order was punitive and casts a stigma. It held that the transfer cannot be a short-cut to disciplinary action and undisclosed exigency. It, therefore, cancelled the transfer order. The next case is that of Ernakulam Bench, R.S. Pillay -v- Chief of Naval Staff, Naval H.Q., N.Delhi & ors (I (1989) ATLT (CAT) 460). The applicant in that case worked as Senior Storekeeper at Naval Base. He was transferred from Cochin to Visakhapatnam. It was noticed by the Tribunal that similarly situated persons with a longer stay of eighteen years, nine years and eight years respectively were retained at the same place and the applicant with lesser stay was picked up for transfer. The transfer was held to be unsustainable. Shri Mohanty next cited the case of H.S. Shrivastava, etc. v. State of M.P. & ors (II(1992) CSJ(SAT) 129), a decision of the M.P. State Administrative Tribunal, Jabalpur. The applicants therein were transferred on administrative grounds based on

irregularities committed in execution of work. No chargesheet and showcause notice were issued. The applicants submitted that the order of transfer casts a stigma on their career and therefore, the impugned order was stated to be punitive. This argument found acceptance and the order of transfer was cancelled. The next case cited is that of Ernakulam Bench, 1994(2) SLJ (CAT) 288 (T.Abdulkader v. Union of India). There the plea was that the transfer was made on account of Minister's interference. The order was issued without application of mind as being Minister's case. The Minister was made a party. There was no refutation of mala fides in the pleadings. There was no indication that transfer was in the administrative interest. Accordingly, the order of transfer was cancelled. The next case cited by Shri Mohanty is 1995 (2) ATJ 119 (S.C.Nijhawan v. Union of India and others). In that case the order was issued in violation of the guidelines. It affected the career prospect of the officer prejudicially. A finding was recorded that the transfer was not ordered in the interest of administration.


3. I have carefully considered the submissions of Shri P.Mohanty and the various rulings cited by him. I have also heard Shri Ashok Mohanty, learned Senior Standing Counsel for the Respondents, who disputed each and every contention raised by Shri P.Mohanty. Shri Ashok Mohanty submitted that Shri Digambar Kar is not an officer of the Department and Shri Kar has no power of transfer. There is no evidence that Shri Kar has influenced the C.G.M.T. He further stated that the cases

cited by Shri P.Mohanty are distinguishable. Each case depends on its own merits and findings.

4. The facts are that the applicant was transferred from Jajpur Town to Cuttack. The applicant himself stayed at Cuttack for twenty-five years. He was transferred to Jajpur Town by an order dated 18.4.1995. The Respondents felt that the services of Sri Haque are required at Cuttack and therefore, they transferred him back. I agree with the learned Senior Standing Counsel that there is no evidence of interference by any outside agency. The transfer is ordered by the C.G.M.T. If the applicant had continued at Cuttack for twenty-five years, there is no justification now to resist a re-transfer to Cuttack. The stay of his wife and mother or education of his children in or around Jajpur is not a new situation which he is required to face. It is clearly stated in Annexure-5 that the applicant has been transferred for administrative reasons. May be his earlier experience required his continued presence at Cuttack. There is no violation of any statutory rule. There is no allegation of mala fide against the transferring authority. There is no evidence that any outside agency has influenced the transfer. There is no need to rely on the judgments of the C.A.T. when the Supreme Court has by now pronounced on the subject of transfer and law has been settled on this issue. The leading authority on the question of transfer is Union of India v. S.L.Abas (AIR 1993 SC 2444).

The Supreme Court held that the Courts have no right to review an order of transfer. When and where the employee has to be transferred is within the discretion of the transferring authority. As stated above, there is no case of mala fide made out and there is no violation of any statutory provisions. Mala fide must be based on firm foundation of facts pleaded and established and not merely on insinuation and vague allegations. (Rajendra Roy v. Union of India, AIR 1993 SC 1236). In view of the settled law laid down by the Supreme Court, I do not think any prima facie case is made out for admission. I, therefore, hold that this Original Application cannot be admitted.

Original Application is dismissed at the admission stage.

  
(N.SAHU) 11/9/96.  
MEMBER (ADMINISTRATIVE)

A.Nayak, P.S.