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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.667 OF 1996
Cuttack, this the 28th day of May, 1997

CHINMOY MOHANTY

....

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?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
28.5.97

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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH:
CUTTACK

ORIGINAL APPLICATION NO. 667 OF 1996
Cuttack, this the 28th day of May, 1997

CORAM:

HONOURABLE SRI SOMNATH SOM, VICE-CHAIRMAN.

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Chinmoy Mohanty, son of late
Nagendranath Mohanty,
Assistant Engineer, Subarnarekha Sub-Division,
Central Water Commission,
Irrigation Colony,
Balasore-756 001

....

Applicant

-versus-

1. Union of India, represented by
the Chairman, Central Water Commission,
Sewa Bhawan, R.K.Puram,
New Delhi-66
2. Section Officer, Establishment-V,
Central Water Commission,
Sewa Bhawan, R.K.Puram,
New Delhi-110 066.
3. Chief Engineer, Mahanadi & Eastern Rivers,
Central Water Commission,
Plot No.655, Sahid Nagar,
Bhubaneswar-751 007
4. Superintending Engineer,
Hydrological Observation Circle,
Central Water Commission,
Behind Maharishi College of Natural Law,
Plot No.25-R, Sahid Nagar,
Bhubaneswar-751 007
5. Executive Engineer, Eastern River Division,
Central Water Commission,
Bhubaneswar

....

Respondents

Advocates for applicant - M/s A.K.Bose,
P.K.Giri & B.N.Swain

Advocate for respondents - Mr.Ashok Mohanty

O R D E R

Somnath Som
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SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of the

Administrative Tribunals Act, 1985, the applicant, who is an

Assistant Engineer under Central Water Commission, has prayed for quashing the order dated 4.9.1996 (Annexure-4) transferring him from the post of Assistant Engineer, Subarnarekha Sub-Division, Central Water Commission, Balasore, to the post of Assistant Engineer, Eastern Rivers Division, Central Water Commission, Bhubaneswar. The facts of this case, as stated by the petitioner in his application, can be briefly noted.

2. According to the petitioner, ever since his joining service in 1986, he has been working satisfactorily, but in the last few years he has been repeatedly transferred from one station to another. In August 1991 he was transferred from Brahmaputra Barrack Circle, Guwahati, to Subarnarekha Sub-Division, Balasore. In February 1993 he was again transferred to office of Chief Engineer (S.C.R.), Hyderabad and in March 1993 he was transferred to Middle Mahanadi Sub-Division No.1, Raipur from where he was transferred to Balasore in April 1995 on ^{year} his representation and at his own cost. After only one and four months at Balasore, he has now been transferred in the impugned order to Bhubaneswar in place of one R.N.Panda and Sri Panda has been posted to Bhubaneswar in his place. Petitioner's wife is a State Government employee under the Education Department and has been working in Mayurbhanj District which is about 60 K.Ms. away from his place of posting at Balasore. The petitioner has made a representation to the State Government to transfer his wife to Balasore. The daughter of the petitioner is staying with him and studying at Balasore Central School and by this transfer to Bhubaneswar, about 300 K.Ms. away from Mayurbhanj, he would face serious difficulty in arranging the education for of his daughter. It has been further alleged by the petitioner

*Submitted by
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that after joining at Balasore in April 1995 he had to take action against some unscrupulous officials and these officials with the help of the local Member of Parliament belonging to the ruling party had prevailed upon the Minister of the Department to transfer him even before completion of his normal term at Balasore. At Annexure-6 to the O.A. is a note from some officer of the Minister's office in Delhi, to the Chairman, Central Water Commission, confirming ~~xix~~ an earlier telephonic discussion. In the note, it has been directed that the applicant should be immediately transferred out of Balasore. He has further stated that many other officers of his level have been allowed to continue for longer period at their respective stations and thus he has been a victim of hostile discrimination because of extraneous consideration as mentioned above.

3. The respondents in their counter have stated that even though the applicant has been transferred several times, but actually those transfer orders were not worked out and his actual shifting has been very much less. According to the counter, the applicant joined as Junior Engineer in October, 1986 and till June, 1991 he worked at different sites under Eastern Rivers Division, Central Water Commission, Bhubaneswar. He was promoted to the post of Extra Assistant Director/Assistant Engineer in order dated 13.5.1991 and posted to Lower Brahmaputra Division, Jalpaiguri, but he did not join his new station and was on leave from 30.6.1991 to 3.9.1991. In the meantime, one post of Assistant Engineer fell vacant under Subarnarekha Sub-Division, Balasore, and the order posting him to Jalpaiguri was modified on compassionate ground to accommodate him at Balasore where he joined on 3.7.1991. As regards his transfer to

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Hyderabad in February 1993 and immediate transfer to Raipur in March 1993, the respondents have said that the original order in February 1993 was for placing his services at the disposal of the Chief Engineer, S.C.R., Hyderabad, who in his turn gave him a detailed order posting ^{him} to Raipur. The respondents have stated that the petitioner being a transferable Government servant is liable to be transferred in exigency of public service and the extraneous consideration and the influence on the Minister are facts not known to the respondents and these in any case are not relevant.

4. The petitioner has filed a rejoinder in which he has stated that he did not avoid his posting to Jalpaiguri. He went there to join, but there was no vacancy and therefore, he had to go and report before the Head Office at Delhi and with great difficulty, obtained an order posting him to Balasore. This is borne out by the letter dated 10.7.1991 in which Superintending Engineer, Eastern Rivers Circle, Central Water Commission, Bhubaneswar, had reported to the Under Secretary(ES), Central Water Commission, New Delhi, that the Executive Engineer, Lower Brahmaputra Division, Jalpaiguri, had intimated that he was not in a position to accommodate the petitioner as Assistant Engineer since no vacancy of Assistant Engineer was available in his office. As regards the allegation of some unscrupulous staff having worked for his transfer from Balasore, the petitioner in Annexure-7 has submitted copy of a note dated 3.9.1996 of Chief Engineer(DSO, M & ER), in which the Chief Engineer has noted that the petitioner is a strict officer and had tried to take work from his subordinates. Because of his strictness, some

*Complaint Form
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bad elements were dissatisfied with him and made complaints against him earlier which on verification were found incorrect. The Chief Engineer has also mentioned that the petitioner was transferred to Balasore in his own interest about a year or so back and his child is in school at Balasore. In view of the above, the Chief Engineer has suggested that in case the petitioner has to be transferred from Balasore, he may be posted to Bhubaneswar.

5. At the time of admission of the OA on 12.9.1995, stay of operation of the impugned order of transfer was given and the stay is continuing till date. In order dated 6.1.1997 the Tribunal wanted to know the nature of dispute between certain Group 'D' officials in the organisation and the applicant which has, according to the applicant, resulted in his transfer. The Tribunal also wanted to know the nature of complaints which were presumably made to the Minister on the basis of which the note referred to earlier was issued from the office of the Minister. In compliance of the above direction, at the time of hearing, the learned Senior Standing Counsel had with him the copy of notings of the relevant file of the Ministry. The learned Senior Standing Counsel appearing on behalf of the respondents submitted that these notes can be shown only to the Court and not to the learned lawyer for the applicant. The learned lawyer for the applicant was agreeable to the suggestion that these papers should be seen only by me and not by him. But in the face of this objection of the learned Senior Standing Counsel to show the relevant notings from the file to the learned lawyer for the applicant, I had declined to peruse those notings, because in case the notings in the file have some

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bearing on the ultimate decision in this O.A., then such notings can be considered only with the knowledge of the learned lawyer for the applicant. Be that as it may, I have heard at length the learned lawyer for the applicant as also the learned Senior Standing Counsel. The learned lawyer for the applicant has contended that the applicant's transfer is of unusual nature, having been ordered at the level of Hon'ble Minister. I am inclined to agree with him because Assistant Engineer is a very junior officer in the formation and normally, transfer of Assistant Engineers is done at the level of the Chairman, Central Water Commission. That the transfer order is quite unusual is borne out by the additional fact that in the same note from the office of the Hon'ble Minister, orders have been issued about transfer of certain Peons and Class IV staff. Normally, transfer of Class-IV staff is not done under the orders of the Minister. Therefore, I have no hesitation in holding that the applicant's transfer is not a normal transfer. But the legal position is that normal or unusual transfer is a matter which falls in the domain of the executive and courts have very little scope for interference in such matters. As has been laid down by the Hon'ble Supreme Court in Shilpi Bose's case (AIR 1991 S.C. 532), a transfer order can be challenged only on the ground of mala fide or violation of statutory rule. The question, therefore, arises if the applicant has been able to prove that the impugned transfer order in this case has been issued mala fide. The transfer order has been passed by the concerned Minister and there is no allegation in the application that the Minister has exercised this power with mala fide intention. It is a well settled principle

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of law that allegation of mala fide has to be specifically and pointedly alleged and proved. That has not been done in this case. It is, therefore, not possible for me to accept that the impugned transfer order has been issued mala fide. It has been submitted, on the other hand, by the learned Senior Standing Counsel that according to his instructions, the Minister has transferred the officer because he has become controversial and the Minister is perfectly within his rights, according to the learned Senior Standing Counsel, to transfer an officer if he becomes controversial. Against the background of the admitted facts in this case, I am not inclined to accept this contention, because the Chief Engineer's note to which reference has been made earlier brings out clearly that some unscrupulous officials were against the applicant because of his strict discipline and attitude to get work done by the subordinates. Allegations were thereafter made against him which were enquired into and found false. Just because interested persons bring some false allegations against an officer, that is no ground for holding that the officer has become controversial. The other point is about violation of statutory rule. In this case, the applicant is a transferable Government servant and it has not been alleged that in his impugned transfer order, any statutory rule has been violated. Thus both the grounds mentioned by the Hon'ble Supreme Court in Shilpi Bose's case (supra) are not present here. After all, the applicant has joined at Balasore in April, 1995 and by now he has completed more than two years at Balasore. At the instance of his Chief Engineer, he was transferred to Bhubaneswar where he was earlier working. As such, he has been kept within the State and it cannot be said that the order of

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transfer from Balasore to Bhubaneswar is punitive in nature.

6. In consideration of the above, I hold that the applicant has not been able to make out a case for quashing the impugned order of transfer. The application is, therefore, held to be without any merit and is rejected. The stay order granted at the time of admission also stands vacated. There shall be no order as to costs.

7. Before parting with the case, I would like to mention that the applicant has urged certain personal difficulties in moving from Balasore without completing his normal tenure of three years. It is also to be noted that he was transferred to Balasore on his own representation and at his own cost. The respondents in their counter have admitted that he was transferred to Balasore on compassionate ground. In consideration of these facts, it is ordered that in case the applicant still has personal difficulties in moving out of Balasore, he should make a representation to the Chairman, Central Water Commission, within 15 (fifteen) days from the date of receipt of copy of this order. I have no doubt that the Chairman, Central Water Commission, would consider his representation on merits and in accordance with rules and would pass appropriate orders on that.

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(SOMNATH SOM)
VICE-CHAIRMAN
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