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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 737 OF 1996.

Cuttack this the 30th day of Oct. 1996.

NARENDRA KUMAR DAS

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APPLICANT

-VRS.-

UNION OF INDIA & OTHERS.

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RESPONDENTS

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? No.
2. Whether it be referred to all the Benches of the Central Adminstrative Tribunal or not ? No.

Naresh Kumar
(N. SAHU) 30/9/96
MEMBER (ADMINISTRATIVE)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 737 OF 1996

Cuttack this the day of

C O R A M:

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

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IN THE MATTER OF:

Narendra Kumar Das, aged about 40 years, son of late Sapani Das, of village: Budhakhandi Jagir, P.O.: Sisilo, Dist.: Khurda now working as Garden Attendant in the Office of the Deputy Superintending Horticulturist Archeological Survey of India, Horticulture Division No. IV, Lewis Road, Old Town, Bhubaneswar, District: Khurda.

.... APPLICANT

BY THE LEGAL PRACTITIONER :- M/s. Bibe kananda Nayak, B.B. Mohapatra, Advocates.

- VERSUS -

- 1) Union of India represented through the Secretary, Department of Culture, Ministry of Human Resource and Development, Shastri Bhawan, New Delhi.
- 2) Director General, Archeological Survey of India, Janapath, New Delhi-11.
- 3) Chief Horticulturist, Archeological Survey of India, East Gate Tajmahal, Agra (Uttar Pradesh).
- 4) Assistant Superintending Horticulturist, Archeological Survey of India, Horticulture Division No. IV, Lewis Road, Near Ravi Talkies, Old Town, Bhubaneswar-2.
- 5) B.K. Mohapatra, Head Clerk, Office of the Deputy Superintending Horticulturist, Archeological Survey of India, Horticulture Division No. IV, Lewis Road, Near Ravi Talkies, Old Town, Bhubaneswar-2.

.... RESPONDENTS

BY THE LEGAL PRACTITIONER: Mr. Ashok Mohanty, Senior Standing Counsel (Central)

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ORDER

MR. N. SAHU, MEMBER(ADMINISTRATIVE) :

In this Original Application, the relief prayed for is to quash Annexures-A/8 and A/11 and also for an interim direction to allow the applicant to continue at Bhubaneswar at the present place of working. Annexure-A/8 is an order of the Deputy Superintending, Horticulturist, ASI, Hort. Division No.IV, Bhubaneswar dated 2.5.1996 transferring the applicant who is a Garden Attendant at Bhubaneswar to Rashmamch Temple Garden, Bishnupur (W.B.) with effect from 8-5-1996 (A.N.). It is stated that this transfer order has the approval of the Chief Horticulturist, Archaeological Survey of India, Tajmahal, Agra (U.P.). This matter came up for admission on 9-10-1996. There was another Original Application No. 343/1996 disposed of on 24-7-1996 wherein the relief claimed was to quash the order of transfer at Annexure-A/7. This is the same order which is made subject matter of afresh Original Application now. As soon as the order was made, the applicant got an interim stay of two weeks. There were pleadings for making the stay absolute by the petitioner and for vacating the stay by Respondents in O.A. 343 of 1996. There were submissions on 16.7.96 that there was no person available to attend the work at Bishnupur Archaeological site and the former horticulturist who was looking after the garden expired on 10-5-1996. The court was about to vacate the temporary stay when the applicant's counsel stated that the applicant was hospitalised and was suffering from partial

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and ^{was} paralysis, stay continued till 24-7-1996. On that day, the case was disposed of with the following observations from the Bench:

"7. 24.7.1996 :

Heard Shri B. Nayak, learned Counsel for the applicant and Shri Ashok Mohanty, learned Senior Standing Counsel (Central). Shri Nayak has brought to my notice a representation filed by him before the Director General, Archaeological Survey of India, Janapath, New Delhi-2 dated 3-6-96 and the said authority is impleaded as Respondent No.2 in this Original Application. Shri Nayak does not want to contest this Original Application any further on merits. The Original Application is disposed of with a direction to Respondent No.2 to dispose of the representation of the applicant dated 3-6-96 within a period of three weeks from the date of receipt of a copy of this order. The applicant shall be bound by the orders of the Director General, Respondent No.2 in this regard. OA is disposed of. Till the representation is disposed of, the transfer of the applicant is hereby stayed."

The Director General, ASI, has disposed of the applicant's representation dated 3-6-96 by Annexure-A/11 which is a telegraphic communication conveying that the order passed transferring the applicant to Bishnupur has to be enforced and the latest date was given as 31-10-96. A formal order dated 25-9-96 has been placed before me at the time of hearing. It is against this order of the Director General as conveyed telegraphically by the Deputy Superintending Horticulturist, ASI ^{that} ~~and~~ the applicant being aggrieved, in the present Original Application seeks quashing of this order.

2. Learned Counsel for the Applicant, Shri B. Nayak has very forcefully and persuasively challenged the order of transfer on the one hand and disposal of representation by the

Director General on the other. He has tried to reopen the entire case on merits. He has cited a large number of decisions to support his stand. In brief he stated that there was a prohibition by a Memorandum dated 16.1.1990 transferring a Gr. 'D' employee to far off places. The transfer was deliberately made with an intention to suppress the enquiry against the Head Clerk and therefore, the order of transfer is a colourable exercise of power. The transfer order was viewed as an order of punishment and was passed with a view to defeat his active role as a champion in making genuine grievances on behalf of the Association. Annexure-A/8, the order of transfer is itself without jurisdiction. Mere telegraphic message at Annexure-A/11 would not amount to disposal of the representation and it amounted to victimisation of the applicant.

3. Learned Counsel for the applicant has cited a large number of decisions to support his stand. There is no need to examine or discuss them and this O.A. can be disposed of on a simple point. I do not think it is a fit case for admission on the ground that this application violates the principle of res-judicata. On the same issue, the applicant had filed Original Application No.343/96. The order No.7 dated 24.7.1996 extracted above, makes it abundantly clear that the applicant had been granted a further stay because he wanted to ventilate his

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grievance to the Director General, ASI, Respondent No.2. It has been made abundantly clear that he shall be bound by the orders of the Director General and on that undertaking the transfer of the applicant had been stayed. The present Original Application, is therefore, hit by res-judicata.

4. While there is no need to discuss the case on merits, because the application is not maintainable, suffice it to say that the transfer is a matter in the province of executive Government and transfer of a Government servant from one place to another is an incident of service. No Government servant has a legal right for being posted at a particular place. The Apex Court has held that there is no right of judicial review of an order of transfer as long as the transfer order is not actuated by mala fides or is made in violation of an enforceable Rule.

5. With regard to mala fides, *eo nomine*, no mala fide is attributed to any particular individual and there is no sufficient material to justify such a claim. Mala fides against the Head Clerk is not maintainable as he is not the transferring authority. The history of the case shows that the applicant has been trying to buy time from the Court for continuing to stay at Bhubaneswar for the last five months. An Union functionary has no indefeasible right to continue at a particular place. Any other Member of the Association can replace him. I am satisfied that the applicant's transfer is made in the exigencies of administration. As the matter is wholly covered by OA No. 343/96, this Original Application can not be admitted.

6. Thus, the Original Application is dismissed at the

admission stage itself. There would be no order as to costs.

Harasinha Sahu
(N. SAHU) 30-X-96
MEMBER (ADMINISTRATIVE)

KNMohanty.