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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 776 of 1996

Cuttack this the ²⁰th day of October, 1996

Mukunda Behra

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Applicant(s)

Versus

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

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

N. SAHU

(N. SAHU)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

Original Application No. 776 of 1996

Cuttack this the 30th day of October, 1996

C O R A M:

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

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Mukunda Behera, son of Gobinda Behera, At present working as Divisional Store Clerk, South Eastern Railway, Cuttack

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Applicant

By the Advocate:

M/s. D.K. Das
S.K. Mohapatra

...

Versus

1. Union of India represented through it's General Manager, South Eastern Railway, Garden Reach, Calcutta
2. Divisional Railway Manager (Engineering) South Eastern Railway, Khurda Road Post: Khurda Road, Dist: Khurda
3. Senior Divisional Personal Officer South Eastern Railway, Khurda Road At/PO: Khurda Road, Dist: Khurda

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Respondents

By the Advocate:

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O R D E R

MR. N. SAHU, MEMBER (ADMINISTRATIVE): This is a petition for admission against the order No. 55/1996 dated 19.6.1996 passed by the Senior Divisional Personnel Officer, S.E. Railway, Khurda Road, transferring the applicant from his post working as Divisional store clerk in S.E. Railway

Cuttack to the Office of the Senior Divisional Personnel Officer, S.E.Railway, Khurda. The applicant assails the transfer on the ground that a criminal case is pending against him. He also states that under the conditions of bail the applicant is unable to proceed beyond the jurisdiction without the leave of the S.D.J.M., Dhenkanal. There is a background history in this case inasmuch as the applicant was an accused in C.C Case No.30 of 1995 in the Court of S.D.J.M., Dhenkanal. The Criminal case was registered for loading more than the permitted amount of M.S.Tiebars. The S.D.J.M., Dhenkanal had set the accused free on bail of Rs.5000 with one surity of the like amount. When the criminal case was initiated, the applicant was suspended from 31.3.1995 and the suspension was revoked on 19.6.1996 by the Sr.Divisional Engineer (North), S.E.Railway, Khurda Road. On the same day, the Senior Divisional Personal Officer (Res.3) transferred the applicant to the Office of Sr.D.P.O. (Coordination) S.E.Railway, Khurda. The applicant states that he is undergoing medical treatment at S.C.B.Medical College, Cuttack for his illness and his children are studying in schools. It would put him to great difficulty to attend the Court at Dhenkanal from his new place of posting at Khurda. It is finally stated that the order of transfer is a malafide exercise of power and is "not structured any rational consideration" whatsoever.

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earlier to

2. The applicant filed an Original Application 603 of 1996, challenging the order of transfer.

This Tribunal granted stay on 19.8.1996 for a period of three weeks with a direction that his representation dated 25.7.1996 should be disposed. A copy of the order dated 18.9.1996, disposing of the said representation is annexed to this Application as Annexure-4. For the reasons mentioned in that order disposing of the representation, the order been of transfer has/confirmed and the applicant is directed to join at Sr.Divisional Engineer's office at Khurda Road immediately.

3. The present Original Application is directed against this order disposing of the representation on the ground that there is no application of mind. Learned counsel for the applicant Shri D.K.Das urged three points which are as under:

- i) The applicant was set free on bail and this has been done because there was no *prima facie* involvement;
- ii) He produced the preliminary examination report of Cardiologist which mentioned hypertension and unstable angina as clinical symptoms.
- iii) The applicant was unnecessarily proceeded against when the main person responsible for loading M.S.Tiebars was not touched.


He pleads that the charges have been framed and it is likely the criminal case would be disposed of soon.

4. I have carefully considered the submissions of the learned counsel for the applicant and I have also gone through the order of the Divisional Railway Manager (P), S.E. Railway, Khurda Road dated 18.9.1996. With regard to the applicant's transfer during mid academic session, the D.R.M. stated that the applicant could have joined immediately when the transfer order was issued and protected his children's study. He, however, also extended the concession of retaining his quarters at Cuttack for the ^{remaining} ~~period~~ of eight months on educational grounds, so that there would be no disturbance to the education of his children. With regard to medical facilities, the D.R.M. stated that there is a Khurda Road Railway Hospital. With regard to criminal case, the transferring authority noticed that when a criminal case is pending and he was under suspension for quite a long time, it would be inadvisable to give him an independent charge at Cuttack.

I have carefully considered the submissions of the learned counsel for the applicant and perused the order of the D.R.M. (P), dated 18.9.1996. I do not find any merit in this petition even at the admission stage. The D.R.M. (P) (Respondent 3) has already allowed the concession to the applicant of retaining the quarters till the academic year closes. With regard to medical facilities, he has indicated that facilities at Khurda Road ^{are} ~~are~~ available. The clinical symptoms shown to me by the applicant's counsel are such that they can also be treated by any competent physician and on his advice

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the applicant can be referred to, if necessary, a competent Cardiologist in any nearby railway hospital. The D.R.M.(P) held that in view of the criminal case, no independent charge of stores can be given to the applicant at Cuttack. I do not see anything unreasonable in these findings. He has carefully considered the applicant's grievance. I do not find any merit in this petition. First of all, transfer is an incident of service. The transferring authority has considered the applicant's grievance in detail and indepth. As the law stands, there are only two grounds on which a transfer can be interfered with, i.e. (1) malafides, statutory (2) infraction of any rules or guidelines. There is no material to establish malafides. Mere allegation will not do. No material has been placed to substantiate the claim. There is no infraction of any guidelines whatsoever. The applicant's difficulties have been considered. I do not think this is a fit case for admission. The application is disposed of - dismissed - at the admission stage. No costs.

haransahar →
(N. SAHU) →
MEMBER (ADMINISTRATIVE)

B.K.Sahoo//