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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.164 OF 1998

Cuttack, this the 31st day of August, 1998

Y.Lakshmana Kumar Applicant

Vrs.

Union of India and 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 Central Administrative Tribunal or not? No .

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN. 31.8.98

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Y.Lakshmana Kumar,
s/o late Y.V.Narasayya,
Senior Telecom Operative Assistant,
A.E.Trunks & Carrier,
Telephone Bhawan,
Berhampur-760 001

Applicant

By the Advocates - M/s S.S.Rao
S.A.Ali &
B.K.Mohanty.

Vrs.

1. Union of India,
represented by Secretary,
Ministry of Communication,
New Delhi (Sanchar Bhawan).
2. Chief General Manager,
Telecommunication Orissa Circle,
Bhubaneswar.
3. Telecom District Manager,
Berhampur-760 001.
4. D.E., Telecom (Planning & Administration),
O/O T.D.M., Berhampur-1. Respondents

By the Advocate - Mr.Ashok Mohanty,
Sr.C.G.Standing Counsel.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed that a direction be issued to Chief General Manager to the effect that by 31.3.1998, i.e., the date upto which the transfer order of the petitioner has been ordered to be kept in abeyance, all the

formalities as envisaged under the order dated 13.2.1998 (Annexure-4) should be complied with. There is also a prayer to quash the order dated 5.2.1998 (Annexure-2) transferring the applicant from Telephone Exchange, Berhampur, to the office of S.D.O., Telegraphs, Phulbani, and the order dated 16.2.1998 (Annexure-5) directing the S.D.O., Phones-1, Berhampur, to relieve the petitioner positively on 4.4.1998.

2. Short facts of the case, according to the petitioner, are that he was appointed as Telephone Operator on 9.1.1965 and served at different places. He has been posted as Senior Telecom Operative Assistant since 1983 against a sanctioned post at Telephone Exchange, Berhampur. According to the petitioner, above him there are 19 Grade-III Sr.T.O.As.(P) and under the petitioner there are another 40 Sr.T.O.As.(P) in Grade III, Grade II and Grade I. Consequent upon closure of Trunk posts at Berhampur and closure of Trunk Exchanges at Chatrapur, Aska, Bhanjanagar, Baliguda and Boudh, Sr.T.O.As. and T.Os. were posted according to their seniority against sanctioned posts. The petitioner, according to his seniority, was posted at Telephone Exchange, Berhampur, in the order at Annexure-1. Later on in order dated 5.2.1998 (Annexure-2) the applicant was transferred from Telephone Exchange, Berhampur, to Phulbani along with another employee. This transfer was stated to be in interest of service and was ordered to take effect immediately. The petitioner filed a representation dated 9.2.1998 (Annexure-3) before the Telecom District Manager, Berhampur, indicating his personal difficulties. In the meantime, Chief General Manager, Telecom, Orissa Circle, in his order dated 13.2.1998 (Annexure-4) instructed to carry out studies regarding surplus operative staff in the Trunk Telephone Exchanges and vacancy at S.D.Os. and other subordinate offices. It was also ordered that volunteers should be called for the vacant posts and thereafter all the volunteers should be accommodated and rest of the vacancies should be filled up by transferring

junior most officials. In this order, it was also indicated that officials already transferred or about to be transferred should be allowed to continue at the present Headquarters till end of March, 1998. Accordingly, in order dated 16.2.1998 at Annexure-5 the transfer order of the petitioner was kept in abeyance till 31.3.1998. In the memo to this order, it has been mentioned that he should be relieved positively on 4.4.1998. The petitioner's case is that this transfer order has been passed without taking into consideration the fact that he is not the junior most person available to be transferred and the order of relief vide Annexure-5 has been passed without completing the study with regard to the surplus staff. On the above grounds, the petitioner has come up with the prayers referred to earlier.

3. Respondents in their counter have submitted that the applicant has put in 33 years of service out of which he has worked at Berhampur for almost twenty-nine years and his transfer is overdue. It has also been submitted that the applicant is not a surplus employee and his transfer has nothing to do with posting of surplus staff. The respondents have further stated that vide order at Annexure-1 the applicant has been posted against a sanctioned post and therefore, he is not a surplus employee. It is further submitted that the transfer of the applicant has been ordered on administrative grounds and the order at Annexure-4 about working out the surplus staff and the vacancy position and the option of the volunteers, etc., is not applicable to him. The respondents have stated that it is not in administrative interest to allow an employee who is in a transferable job to remain at one place for a long period of time as thereby vested interests are created. On the above grounds, the respondents have opposed the prayers of the petitioner.

4. The petitioner in his rejoinder has submitted that originally he was transferred to Phulbani. Chief General Manager in his order at Annexure-4 directed that a survey should be carried out about the surplus staff and the vacancy position,

and the volunteers for the vacant posts. Pending completion of examination of these aspects, the transfer orders were kept in abeyance and therefore, it is not correct for the respondents to argue that the petitioner is not a surplus staff. The second point taken in the rejoinder is that by this transfer order, only the office bearers and members of a particular union have been transferred by way of harassment. The applicant is the District President of one Union and the then Telecom District Manager Shri A.Mohanty was displeased with the members of this Union and that is how he has been transferred. It is further alleged that those members of the applicant's Union who resigned from the Union were not disturbed. In support of this contention, the petitioner in his rejoinder has given the names of several persons who were not transferred from Berhampur because they resigned from the membership of the Union of which the petitioner is the District President. The petitioner has also submitted that there are several other persons who have remained at Berhampur for 25 to 30 years. But instead of their transfer, the petitioner has been transferred on the ground that he has completed 29 years at Berhampur. All these, according to the applicant, go to show that the transfer order is mala fide.

5. We have heard Shri S.A.Ali, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the respondents, and have also perused the records. At this stage, it is relevant to mention that on the date of admission of the application, on 1.4.1998 the transfer order of the applicant was stayed for a period of fourteen days and this stay order has been continued from time to time till today.

6. In support of the prayers made in the O.A., it is submitted by the learned counsel for the petitioner that the transfer order of the applicant has been issued mala fide only to harass the members of a particular Union with which the then Telecom District Manager was displeased. It is submitted by the

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learned counsel for the petitioner that according to law as laid down by the Hon'ble Supreme Court, a transfer order can be challenged on the ground of mala fide, and as has been laid down by the Hon'ble Supreme Court in the case of Rajendra Roy v. Union of India and another, AIR 1993 SC 1236, it may not always be possible to establish malice in fact in a straight-cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and attending facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions. In the instant case, it is alleged that the previous Telecom District Manager Shri A.Mohanty was displeased with the Union of which the petitioner is the District President. But it has not been alleged that the transfer order has been issued by the Telecom District Manager, Shri A.Mohanty. Secondly, even though mala fide has been alleged against Shri A.Mohanty, he has not been made an opposite party by name. Therefore, it has not been possible for Shri A.Mohanty to appear and deny the allegation of mala fide against him. In the absence of that, it is not possible to accept the plea of the petitioner that the transfer order has been issued mala fide. Merely by making certain general averment in the petition, mala fide cannot be established. For this, the petitioner has to make the person against whom mala fide is alleged a party to the O.A. so that he can have the chance to appear and state his case. In the absence of that, it would not be correct to take a view that the transfer order has been issued mala fide. Moreover, it has not been specifically alleged that the transfer order has been issued by Telecom District Manager, Shri A.Mohanty or issued at the time when Shri Mohanty was the Telecom District Manager. This ground to challenge the transfer order must, therefore, fail.

7. The second ground of challenge is that even though the Chief General Manager, Telecom, Orissa Circle, in his

order dated 13.2.1998 directed that studies regarding surplus staff and the vacancy position should be carried out and completed by 31.3.1998, instead of completing the study the orders have been passed to relieve the petitioner on 4.4.1998. The respondents have pointed out that the petitioner is not a surplus staff. Under Annexure-1 he has been posted against a sanctioned post and he has not become surplus on abolition of his post and therefore, he is not a surplus staff. We note that the petitioner has merely stated in his O.A. that consequent upon closure of Trunk posts at Berhampur and closure of Telephone Exchanges at Chatrapur, Aska, Bhanjanagar, Baliguda and Boudh, certain staff were posted according to their seniority. The petitioner has not alleged that consequent on this closure of Trunk Exchanges, the post held by him became surplus and he became a surplus employee. On the other hand, from annexure-1 to the O.A. we note that the petitioner was posted against a sanctioned post in Berhampur Telephone Exchange. It is, therefore, not possible to accept the contention of the petitioner that he is a surplus staff. Consequently, the question of making a study of the surplus staff and the vacancy position and the option of volunteers for the vacant posts, etc., are not considerations which can be applied with regard to the transfer of the petitioner.

8. The respondents have stated that the petitioner has worked at Berhampur for twenty-nine years out of his total service of 33 years, and on that ground he has been transferred. The petitioner in his rejoinder has given a list of several employees who have completed 25 years, 29 years and one lady employee 35 years at Berhampur. From this list, it is seen that except the lady employee Smt.K.Ratnam, all other persons mentioned by the petitioner have put in 29 years except two who have put in 25 years at Berhampur which is less than the stay of the petitioner at Berhampur. Thus, it is seen that the petitioner has put in 29 years at Berhampur out of his total period of service of

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thirty-three years and is thus one of the persons whose stay at Berhampur is longest. It is, therefore, open for the respondents to transfer him from Berhampur only on the ground that he has stayed for twenty-nine years out of his total service of thirty-three years at Berhampur. As regards his personal difficulties, as he has remained at Berhampur for twenty-nine years he cannot claim that because of his personal difficulties he would continue to remain indefinitely at Berhampur for the rest of his service career. The respondents have stated that by long stay of a transferable employee at one place, vested interests are created. In the case of the petitioner it appears from his representation that he has created enemies at Berhampur and according to him, there was a murderous attack on him sometime ago while he was working in his office. This goes to show that the petitioner's long stay at Berhampur has also created problems for the Department and therefore, there is nothing wrong on the part of the respondents to transfer him from Berhampur to Phulbani.

J. J. M.
9. It has been submitted by the learned counsel for the petitioner that in the case of Ganesh Prasad Patra v. United Bank of India, 1997 (II) OLR 363, the Hon'ble High Court of Orissa, after taking note of different decisions of the Hon'ble Supreme Court in the matter of transfer, have held that the departmental authorities should follow the guidelines with regard to transfer. It is submitted by the learned counsel for the petitioner that in this case, the petitioner is not the juniormost person, but even then he has been transferred from Berhampur to Phulbani although persons who are junior to him have remained at Berhampur. This contention is without any merit because transfer orders are not issued on the basis of seniority. As we have already noted, the petitioner has stayed for about three decades at Berhampur and therefore, his transfer from Berhampur is overdue.

10. In consideration of the above, we hold that the

petitioner has not been able to make out a case for any of the reliefs prayed for by him. The Original Application is held to be without any merit and is rejected, but, under the circumstances, without any order as to costs. The stay order issued on 1.4.1998 also stands vacated.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
21.8.98