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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.320 OF 1998
Cuttack, this the 3rd day of September, 1998

Sri Maharaja Naik 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 3.9.98

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CORAM:

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

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Sri Maharaja Naik,
aged about 54 years (Safaiwala),
son of late Kulamani Naik,
At-A.R.C. Qr.No.2RA-129, PO-Charbatia,
P.S-Choudwar, District-Cuttack Applicant

By the Advocates - M/s S.S.Panda &
S.Mallick.

Vrs.

1. Union of India,
represented through Director (A),
Aviation Research Centre,
Director General of Security (Cabinet
Secretariat), Block-V(East),
R.K.Puram, New Delhi-110 066.
2. Deputy Director (A),
Aviation Research Centre,
At/PO-ARC, Charbatia,
District-Cuttack.
3. Assistant Director (A),
Aviation Research Centre,
Director General of Security(Cabinet
Secretariat), Block-V(East),
R.K.Puram,
New Delhi - 110 066 Respondents

J. Jm.
By the Advocate - Mr.U.B.Mohapatra,
Addl.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals act, 1985, the petitioner has prayed for
quashing the order dated 14.5.1998 at Annexure-1 transferring him

from Charbatia to Sarsawa with effect from afternoon of 30.6.1998 in public interest. There is also a prayer for a direction that he should be allowed to continue at A.R.C., Charbatia, without any break in service.

2. Facts of this case, according to the petitioner, are that he was appointed on 16.8.1985 at A.R.C.Charbatia, as a Safaiwala. He is a Class IV staff and he has been discharging his duties to the best satisfaction of his superiors. While working as such, in the impugned order at Annexure-1 issued by respondent no.3 he has been transferred to Sarsawa from Charbatia. The petitioner states that there is no scheme for rotational transfer for Group-D employees according to the circular dated 16.9.1988 and therefore, he should not have been transferred as he is a Group-D employee. It is further submitted by him that 52 Safaiwalas have been employed for Doom Dooma and Sarsawa, but are serving at A.R.C, Charbatia. Some of them are senior to the petitioner and they should have been transferred to Sarsawa instead of the applicant. Further it is stated that there are many vacancies of Safaiwala at Charbatia and he can easily be adjusted at Charbatia. His wife is a heart patient and requires regular medical check-up. On the above grounds, he has come up with the prayers referred to earlier.

3. Respondents in their counter have submitted that transfer of the applicant to Sarsawa is a routine rotational transfer. The applicant has been appointed as Sweeper, subsequently designated as Safaiwala, in Aviation Research Centre, Charbatia, on 15.2.1966. He has been transferred to Sarsawa because one Nanda Naik, who belongs to Orissa, has completed his tenure at Sarsawa and had represented to come to Charbatia. As there is no vacancy of Safaiwala at Charbatia, the next seniormost official has been considered for transfer to Sarsawa to accommodate Nanda Naik who has completed his tenure at Sarsawa. It is further submitted that from the year 1966, the applicant has

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been continuously working at Charbatia and has, therefore, been transferred to Sarsawa. It is further submitted that all the posts in Charbatia carry all India transfer liability and there is no bar on transfer of Group-D employee. But there is a stipulation that normally Group-D employees should not be subjected to routine rotational transfer. In the past also, Group-D employees have been transferred from Charbatia and this is not the first instance, as alleged by the petitioner. The petitioner has already been relieved on 30.6.1998 and his reliever has already joined at Charbatia. The respondents have stated that the averment of the petitioner that 52 employees appointed as Safaiwalas against posts at Sarsawa and Doom Dooma are continuing at Charbatia is not correct. The respondents have also stated that the applicant's request for change of his place of posting to Doom Dooma instead of Sarsawa on the ground that his daughter is studying in Oriya medium school has been considered but not acceded to. In view of the above, the respondents have opposed the prayer of the petitioner.

4. We have heard Shri S.S.Panda, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing for the respondents, and have also perused the records. The learned counsel for the petitioner has also submitted a list of citations with copy to the other side which has been taken note of.

JJm
5. The first point urged by the learned counsel for the petitioner is that the impugned order of transfer has been issued by Assistant Director (A) in the office of Director General of Security, New Delhi. It is submitted by the learned counsel for the petitioner that Assistant Director (A) in the office of Director General of Security, New Delhi (who is respondent no.3 in this O.A.) is not the competent authority to transfer him. According to the learned counsel for the petitioner, he can only be transferred by the Assistant Director at Charbatia. Therefore, it is submitted that as the transfer order has been passed by an

authority who is not competent to do so, the transfer order is liable to be quashed. In support of his contention, the learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in the case of Dr.Ramesh Chandra Tyagi v. Union of India and others, 1994 (1) SLR 838, where their Lordships of the Hon'ble Supreme Court have held that the transfer order passed by an authority not competent to do so is invalid and non est and therefore, the order of termination of service for non-compliance with such order of transfer falls automatically. In the instant case, we are unable to accept the contention of the learned counsel for the petitioner that the authority competent to transfer the applicant from Charbatia is Assistant Director, A.R.C., Charbatia. Obviously, the Assistant Director, Charbatia has no control over the staff of A.R.C. at Sarsawa and Doom Dooma and therefore, for transfer of staff from A.R.C, Charbatia to Doom Dooma or Sarsawa, the order has to be issued by the Headquarters office and this is what has been done in this case. It has been submitted by the learned counsel for the petitioner that the proper course in the case of transfer of the petitioner to Sarsawa would have been for the Assistant Director, Charbatia, to have liaison with Assistant Director, Headquarters and then issue transfer order transferring the petitioner from Charbatia to Sarsawa. Learned counsel for the petitioner has not shown any rule in support of the above contention. It stands to reason that transfer of a person from one unit of A.R.C. at Charbatia to another unit at Sarsawa will have to be issued by the A.R.C.Headquarters and not by an officer at Charbatia. This contention is, therefore, held to be without any merit and is rejected.

6. The second contention of the learned counsel for the petitioner is that the petitioner is a Group-D employee and according to the instructions at Annexure-2, Group-D employees are not liable to routine rotational transfer. Respondents in their

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counter have also stated that Group-D employees have been subjected to transfer ^{in the past.} In the instant case, the petitioner has been transferred because right from the beginning of his service from 1966 according to the respondents and from 1965 according to the petitioner, he has been working at Charbatia. Another employee Nanda Naik, who is a Safaiwala at Sarsawa, has completed his tenure and has represented to come back to Charbatia, he being a man of Orissa and, therefore, in order to accommodate him, the departmental authorities have transferred the petitioner who is the seniormost person available at Charbatia and who has never been out of Charbatia, to Sarsawa. It is clear from the above that this is not a routine rotational transfer. This contention of the learned counsel for the petitioner must, therefore, fail.

7. The third point made by the learned counsel for the petitioner is that in the past Group-D employees have never been transferred from one station of A.R.C. to another station. The respondents in their counter have enclosed several orders under which Safaiwalas have been transferred in the past in between A.R.C. organisations at Charbatia, Doom Dooma and Sarsawa. This contention is, therefore, held to be without any merit.

8. Learned counsel for the petitioner has also submitted that a Group-D employee being a lowest paid staff should not be transferred to far-off place. Moreover, his wife is a heart patient and his daughter is reading in Oriya medium in Class IX. In support of his submission, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of B.Varadha Rao v. State of Karnataka and others, AIR 1986 SC 1955, in which their Lordships of the Hon'ble Supreme Court have deprecated the frequent, unscheduled and unreasonable transfers of a Government employee which uproots his family, disrupts the education of his children and leads to numerous other complications and problems resulting in hardship and

J. Jm.

demoralisation. In that decision, their Lordships of the Hon'ble Supreme Court have also added that position of Class III and Class IV employees stands on a different footing. In view of this, it is submitted by the learned counsel for the petitioner that the impugned transfer of the petitioner to Sarsawa should be quashed. As we have already noted, the case of the petitioner is not a routine rotational transfer. He has worked at Charbatia for more than thirty-two years ever since his joining in service and now he has been transferred in order to accommodate one Nanda Naik who belongs to Orissa and has completed his tenure at Sarsawa. The respondents are competent to take note of difficulties of different employees and issue orders of transfer. There is nothing illegal or wrong in such orders of transfer.

9. In consideration of the above, we hold that the petitioner has not been able to make out a case for any of the reliefs asked for by the petitioner. The Original Application is, therefore, held to be without any merit and is rejected, but, under the circumstances, without any order as to costs.

J. S. M.
10. In course of hearing, the learned counsel for the petitioner had submitted that instead of Sarsawa, the petitioner should be transferred to Doom Dooma which is a station at north-east and therefore, if he is transferred to Doom Dooma he would be allowed to retain his quarter at Charbatia. We had directed the learned Additional Standing Counsel to obtain instructions on this point and mention the factual position in the counter. In reply to this point, it has been submitted by respondents that three posts of Safaiwala were lying vacant at Doom Dooma, but for filling up of the posts, three persons belonging to that area have already been selected and appointment orders are going to be issued shortly after police verification is over and as such, it has been submitted that there is no vacancy at Doom Dooma. Moreover, it has been submitted by the respondents that on the above grounds, the representation of the petitioner

for changing the order of transfer from Sarsawa to Doom Dooma has been considered and rejected. In view of the above, we do not intend to issue any direction with regard to this prayer of the petitioner.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
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