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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 361 OF 1998.

Cuttack this the 8th day of September, 1998.

ASHUTOSH MOHAPATRA

...

APPLICANT.

-VERSUS -

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 Central Administrative Tribunal or not? *No*.

Somnath Som
(SOMNATH SOM)

VICE-CHAIRMAN

3.9.98

8.1.98
(G. NARASIMHAM)
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

ORIGINAL APPLICATION NO. 361 OF 1998 .

Cuttack this the 8th day of September, 1998.

C O R A M:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

IN THE MATTER OF:

Shri Ashutosh Mohapatra, aged about 37 years,
S/O. Yudhistir Mohapatra, resident of D-75,
Sector-1, Rourkela, Dist. Sundergarh.

... Applicant.

By legal practitioner :- M/s. P. R. Dash, Jeetendra Sahu,
Subhendu Mohanty,
Advocates.

-versus-

1. Union of India represented through the Secretary to Government of India, Ministry of Posts, Dak Mantralaya, New Delhi.
2. Chief Postmaster General Orissa Circle, Bhubaneswar, Dist. Khurda.
3. Post Master General, Sambalpur Region, Sambalpur, Po. Sambalpur, Dist. Sambalpur.
4. Senior Superintendent of Post Offices, Sundergarh, Po/Dist. Sundergarh.
5. Shri Surendra Kumar Nanda, Accountant, Division Office, Sundergarh, Po/Dist. Sundergarh.

... Respondents.

By Legal Practitioner :- Mr. B. K. Nayak, Additional Standing Counsel (Central)

....

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :-

Applicant is an Accountant of Postal Deptt., serving at Rourkela Head Post Office under the Supdt. of Post Offices, Sundergarh, Respondent No. 4, seeks to quash the order dated 07-07-1998 transferring him to Sundergarh to be posted as Accountant (Annexure-B) on the ground that the transfer has been made contrary to the transfer policy adopted by the Department and in order to favour Respondent No. 5 Shri Surendra Kumar Nanda to be posted at Rourkela, this transfer order has been issued. His case is that, he has joined at Rourkela on transfer on 24.6.1994 and as per the transfer Policy and guidelines followed by the Department, unless one completes four years term ending in the month of September, he is not liable to be transferred and transfer, if any, should be effected in the month of May. Though he has not completed four years of service, he has been transferred

only to accommodate Respondent No.5 who had not even completed a minimum period of one year at Sundergarh because though the letter of the transfer to Sundergarh in May, 1997, the transfer period would be counted from September, 1997 as per the guidelines. Moreover, applicant's children, prior to receipt of such transfer order, have been admitted in Class-VI and Class-IV at Rourkela and this would cause a great hardship in case, he is transferred.

By order dated 22-7-98, this order of transfer, so far as the applicant is concerned, has been stayed and the stay order is still continuing.

2. Respondent No.5 has not entered appearance inspite of due service of notice. Departmental Respondents in their detailed show cause to the prayer for interim relief plead that the applicant had completed his tenure of four years in the Post of Assistant Accountant Rourkela Head Office by 23.6.1998 and as such, is due for rotational transfer. The transfer liability of the applicant is confined to Sundergarh Division only and in Sundergarh Division, there are three such offices namely

Sundergarh Head Office, Rourkela Head Office and Office of the Senior Superintendent of Post Offices at Sundergarh. In all these three offices, posts of Accountant/Assistant Accountant are available. Respondent No. 5 serving as Accountant in the Office of the Senior Superintendent of Post Offices, Sundergarh (Respondent No. 4), represented to the Chief Post Master General, Bhubaneswar (Respondent No. 2) for his transfer to Rourkela on the ground that his spouse is serving as teacher at Rourkela. As per Rules, there is provision to consider posting of wife and husband in the same station provided there is no administrative inconvenience in this regard. Respondent No 2 i.e. Chief Postmaster General, Orissa Circle, Bhubaneswar favourably considered his representation and communicated to Respondent No. 4 his decision to transfer Respondent No. 5 to Rourkela. Annexure-R/1 is the letter dated 2.7.1998 received by Respondent No. 4 in this regard. On the basis of this order of Respondent No. 2, Respondent No. 5 who had already completed one year of

of service at Sundergarh has been transferred to Rourkela and applicant serving at Rourkela having already completed more than four years of tenure at that place, has been ordered to be transferred to Sundergarh in the interest of service. ^{Due to} ~~For~~ non-joining of the applicant, the post of Accountant at Sundergarh Head Office is lying vacant. Representation of the applicant ~~praying~~ ^{on} for some domestic problems, could not have been favourably disposed of by the Respondents. There is no mala fide intention in this transfer which does not involve violation of any statutory provisions. Transfer being an incident of service, can not so lightly be questioned. It is a matter for the appropriate authority to decide who should be transferred and to which place. Finally the Respondents say that no guidelines has been violated in passing this order of transfer.

3. During the hearing, learned counsel for the applicant has taken us through various decisions of the Apex Court in support of his contention that once transfer order is passed on malice and is contrary

to the guidelines issued by the Department, the same can not be legally sustained. He has also cited a Division Bench decision of the Hon'ble Orissa High Court reported in 1997(II) OLR - 363 (GANESH PRASAD PATRA -VRS- UNITED BANK OF INDIA AND OTHERS). Through this judgment, the Hon'ble High Court of Orissa disposed of as many as 21 writ cases filed by the employees of United Bank of India challenging their transfers to outside the State of Orissa on the ground that the said orders are contrary to the guidelines for posting and transfer/placement for officers framed by the Bank which was annexed as Annexure-2 to the said writ petitions. The Hon'ble High Court of Orissa, taking note of the judgments of the Apex Court laid down on the subject, decided in the years 1991, 93 and 1995 summarised the law on the points as follows:-

" xxx xxx xxx

(i) Transfer being an incidence of service should not be interfered with by the Courts or Tribunals unless it is made

mala fide, arbitrarily or in violation
of any statutory law.;

- (ii) Administrative instructions can not confer any right on an employee to oppose transfer;
- (iii) Order of transfer can be interfered with if it is in violation of any statutory provisions, but while ordering the transfer, the authority must keep in mind the guidelines issued by the Government or proper authority on the subject;
- (iv) If any representation is made by an employee in respect of his transfer, the appropriate authority must consider the same having regard to the exigency of transfer.

The Hon'ble High Court of Orissa

set aside the orders of transfer of the the applicants to the outside the State of Orissa mainly on the ground that the guidelines have not been kept in mind by the transferring authority in not taking the case of Officers, who are serving outside the State of Orissa from 1987 to 1990 for transfer on repatriation to home State ordered transfer of officers serving in the State of Orissa though they were not due for such transfer. ^{the} No reason that weighed in the mind of the Hon'ble Court that persons who are serving in the State since 1979 as per the guidelines should have been transferred to outside the State. Thus, this case is clearly distinguishable with the case before us, which does not at all involve any transfer from one station to other. In the instant case, the transfer has been made from one place to other within the same division and ^{distance} ^{the two places} the transfer between one place to other is hardly 30 KMs connected with frequent public transport.

4. We also do not see that the guidelines have been violated by the Department. A copy of the guidelines dated 23rd February, 1998 has been filed by the Department, so also by the applicant. It is not in dispute that the tenure period is four years. It is also not in dispute that the applicant joined at Rourkela on 24.6.1994. This four year term was complete on 23.6.98. Of course the contention of the applicant is as per the guidelines this four year term would be complete on 30.9.98, and it is only thereafter, his ^{new} case is ~~right~~ for transfer. We have carefully gone through the guidelines.

On ~~reading~~ of Clause-13, will make it clear that the Department should not wait in every case till 30th of September to make a decision for transfer of an employee. It lays down that transfer should be effected sufficiently in advance of the commencement of the academic year. Officials who are due to complete their tenure by 30th September in any year should be transferred in the preceding April-June period or the following December-January period

depending upon the academic session. Those who are completing tenure after the 30th of September, should be considered in December of the year or in April-June of the following year depending upon the starting date of the academic session. In this case four year period of applicant was complete by 23.6.98. Hence his ~~wife~~ was ^{ripe} for transfer. This transfer order was issued in the 1st week of July, 1998. It is not the positive case of the applicant that by the date of issue of the order the academic session has already commenced. On the other hand, his own case would reveal that after the order of transfer is issued he had admitted ~~his~~ children in school at Rourkela.

We, therefore, do not see any flaw in the order of transfer. It is true that Respondent No. 5 was brought back to Rourkela on the ground that his spouse is serving as teacher at Rourkela. This was done, after he had completed one year of service, which is permissible under clause-8 of the guidelines.

5. Even assuming the guideline has not been strictly adhered to in issuing the transfer of the applicant, yet we do not see any legal infirmity or mala fide in the order of transfer leading to his case. ~~despite infirmity~~

6. In view of our discussion above, we do not see any merit in this petition, which is accordingly dismissed, but without any order as to costs.

7. The order of stay passed on 22-7-98 stands vacated.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
1998

8-9-78
(G.NARASIMHAM)
MEMBER(JUDICIAL)