

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A. NO. 553 OF 1999

Cuttack this the 17th day of May, 1999.

Jalandhar Nayak.

Applicant

Versus.

Union of India &

Respondent

(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.*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
17-5-99

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 553 of 1998.

Cuttack, this the 12th day of May, 1999.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE - CHAIRMAN:

AND

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

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Shri Jalandhar Nayak, aged about 48 years,
Son of late Khetrabashi Nayak of Village-
Goradajhadi, Po. Salapadiha, Dist. Khurda, at
present working as Security Guard, All India
Radio, Auxiliary Studio, Unit-IV, Bhubaneswar,
Dist. Khurda.

... Applicant.

By legal practitioner: Mr. J. K. Misra, -2.

- Versus -

1. Union of India represented by the
Station Director, All India Radio,
Cuttack. ...

... Respondent.

By legal practitioner : Mr. B. K. Nayak, Additional Standing
Counsel (Central).

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O R D E R

MR. G. NARASIMHAM, MEMBER(JUDICIAL) :

Applicant a security guard under All India Radio challenges the order dated 01-08-1997 (Annexure-1) passed by the Respondents deploying him on duty from Bhubaneswar to High Power Transmitter (HPT), at Fakirapara on the ground that it is an order of transfer and it would cause hardship on his part to shift his establishment from Bhubaneswar to Fakirapara because of the studies of his children at Bhubaneswar and also for his illness. According to him, he is a Scheduled Caste category of Gr. IV employee and inspite of recommendations of Shri Hemananda Biswal, the then Chief

Minister of Orissa and the then ADC to Governor recommending to his authorities for his continuance at Bhubaneswar, the Authorities did not pay any heed to it. It is also pleaded that a post of Group IV staff of Security Guard is still lying vacant at Bhubaneswar and there would be no difficulty on the part of the authority to retain the applicant at Bhubaneswar.

2. Department in counter pleaded that it is not an order of transfer but an order of change of the place of deployment on administrative grounds. All India Radio, Cuttack i.e. Respondent, has two other units namely Auxiliary Studio, Bhubaneswar and High Power Transmitter (HPT) at Fakirpara. Respondent being the administrative head of all these two units, besides the establishment at Cuttack has the duty and responsibility to manage these establishments properly and effectively. Hence change in place of deployment can not be termed as transfer. At Fakirpara, Government quarters are available for the Security Guards. Education of children is not a ground for cancellation of the impugned order. as to the allegation of illness Departmental Respondent pleads the same as self contradictory inasmuch as in Annexure-2 dated 6.10.98, the Sub Divisional Medical Officer, Khurda Road found him not fully medically fit yet in his application under section 19 of the Administrative Tribunals Act, 1985 filed on 26th of October, 1998 he takes the plea that he is fit to resume his duty.

3. The main point for determination is whether the order under Annexure-1 needs to be quashed.

Since vide order under Annexure-1, the place of duty

of the applicant has been shifted from Bhubaneswar to Fakirapara and that too, not for any fixed period, we are not inclined to accept the contention of the learned Addl. Standing Counsel (Central) appearing for the Respondent not that it is/an order of transfer. This ^{part} in Annexure-1 itself, it has been mentioned that the applicant is entitled for Transfer TA/DA etc, as admissible under rules.

Question now arises whether this order of transfer in Annexure-1 can be interfered with by this Tribunal. The order of transfer was passed on 1.8.97. This application, challenging the order of transfer has been filed on 26th of October, 1998 i.e. more than one year after the passing of the impugned order of transfer. There is no prayer for condonation of delay. It is also not clear from the pleadings that the applicant has represented to his higher authorities against this order of transfer. It is true that under para 4.6. at the bottom he has mentioned that he has made representation to his authority under Annexure-6. But this Annexure-6 dated 11.8.97 does not appear to be a representation seeking cancellation or reconsideration of the order of transfer under Annexure-1. All that have been mentioned therein that because of Diabetes the applicant is unable to resume his duty and this Annexure-6 is completely silent in regard to the order under Annexure-1. Hence it can not be treated as a representation in connection with the order of transfer under Annexure-1.

Under Section 21 of the Administrative Tribunals Act, 1985 one has to file an application within one year from the date on which the order in question has been passed. Viewed from this angle, this application is barred by limitation.

Even, on merit, we do not see any scope for interference.

Law is well settled in a catena of decision of the Hon'ble Apex Court that transfer is an incident of service and only in exceptional cases the Courts or Tribunal should interfere with the order of transfer. A Division Bench of the Hon'ble High Court of Orissa in Ganesh Patra vrs. UBI reported in 1997(2)OLR 363 after analysing various decisions of the Hon'ble Apex Court on the point laid down the following principles:

- a) Transfer being an incident of service could not be interfered with unless, it is mala fide, arbitrary or in violation of any statutory Rules/Law.;
- b) Administrative instruction can not confer any right on an employee to oppose transfer;
- c) Order of transfer can be interfered with if it is in violation of any statutory provisions.
At the same time, the transferring authority must keep in mind the guidelines issued by Government on the subject;
- d) If any representation is made by an employee in respect of his transfer, the appropriate authority must consider the same having regard to the exigencies of transfer.

During hearing learned counsel for the applicant ~~verbally~~ submitted that the applicant has been at Bhubaneswar since 1992. Hence it can not be said that his transfer from Bhubaneswar in August, 1997 is in violation of any statute or rule. The grounds pleaded in the original Application by the applicant, as mentioned above, by no stretch

of imagination ~~it~~ can be treated as legal grounds for interference ^{with} in the transfer order of the applicant. It is not the case of the applicant that the impugned order of transfer is mala fide. We are, therefore, not inclined to interfere with the impugned order of transfer in Annexure-1.

It is true that the applicant in para 4.7 pleads that the post of IV Grade staff of Security Guard is still lying vacant at Bhubaneswar. There would not be any inconvenience to the Department to allow the applicant to continue at Bhubaneswar. Existence of any such vacant post has been denied in para 9 of the counterstating that the reliever of the applicant has already joined at Bhubaneswar since long. Even if any other Grade IV security Guard post is lying vacant at Bhubaneswar it is upto the Department to consider and it is not for this Tribunal to act as a higher administrative forum for the Department to issue such direction in that regard.

4. In the result, we do not see any merit in this application which is accordingly rejected. No costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
17-5-99

17-5-99
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.