

6
CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 569 OF 1998

Cuttack, this the 28th day of July, 1999

Nicholas Lakhra 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

28.7.99

X

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 569 OF 1998
Cuttack, this the 28th day of July, 1999

CORAM:

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

.....

Nicholas Lakhra, aged about 50 years, son of late P.Lakra at present working as Junior Engineer (Civil), Koraput Central Sub-Division, Central Public Works Department, At/PO/District-Koraput Respondents

Advocate for applicant - Mr.A.K.Mohapatra

Vrs.

1. Union of India, represented through the Secretary, Ministry of Urban Development, Government of India, Nirman Bhawan, New Delhi.
2. Director General of Works, Central Public Works Department, Nirman Bhawan, New Delhi.
3. Superintending Engineer, Co-ordination Circle, Central Public Works Department, Nizam Palace, Calcutta-20, West Bengal.
4. Executive Engineer, Bhubaneswar, Central Division-II, Central Public Works Department, At/PO-Bhubaneswar, District-Khurda
5. Assistant Engineer, Koraput Central Sub-Division, Central Public Works Department, At/PO/District-Koraput

..... Respondents

Velam.
Advocate for respondents -Mr.B.K.Nayak
A.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 3.7.1996 at Annexure-3 transferring the petitioner to Calcutta and the order dated 13.10.1998 at Annexure-4 directing him to keep all his records and measurements and accounts ready to hand over charge of his Section by the end of October 1998 for the purpose of his relief. The second prayer is for a direction to the respondents to allow the applicant to continue in his present station till May 2000. By way of interim relief it was prayed that the operation of the order at Annexures 3 and 4 should be stayed. On the day of admission of the petition on 3.11.1998 it was ordered that the impugned order dated 3.7.1998 at Annexure-3 is stayed till 18.11.1998 in case the applicant has not yet been relieved or has not handed over charge till that date. The interim order has continued till date.

2. The case of the applicant is that he is working as Junior Engineer(Civil) and is presently posted at Koraput Central Sub-Division, C.P.W.D., Koraput. The applicant has physical disability to the extent of more than 40%. The applicant's wife is working as a primary school teacher in Balipadaraguda Primary School under Koraput Block in the State Government. The applicant's two daughters are reading in +3 Science 1st year and 3rd year in D.A.V.College,Koraput. Respondent no.3 in his order dated 3.7.1996 at Annexure-3 transferred the applicant posted him under SSW, Eastern Zone, Calcutta, in an existing vacancy. But that order was not acted upon and was kept in abeyance. Subsequently, respondent no.5 in office order dated 13.10.1998 at Annexure-4 has directed the applicant keep all his records up-to-date so that he can hand over the charges and be relieved immediately in pursuance of the order contained in Annexure-3. In the said letter respondent no.5 has requested respondent no.4, the

S. Som.

Executive Engineer, Bhubaneswar Central Division-II, C.P.W.D., Bhubaneswar, to post a substitute in place of the applicant. The applicant has stated that he has filed a representation on 27.8.1996 praying that he should be allowed to continue in his present place of posting because of his personal inconvenience till the end of academic session of the year 2000. This has also been recommended by respondent no. 4 in his letter dated 25.9.1996. After getting the order dated 13.10.1998 at Annexure-4 the applicant has submitted a further representation on 21.10.1998 which is at Annexure-5. No favourable order has been passed on these two representations by respondent no.4 and that is why the applicant has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have stated that as per the record of Service Book of the applicant it is not mentioned therein that he is physically handicapped by more than 40%. Accordingly, they have denied this statement of the applicant. It is also stated that there is no documentary evidence in the Service Book or any declaration by the petitioner that his wife is employed as a primary school teacher and in any case because of this factor the applicant cannot be kept at Koraput indefinitely. The transfer order of the applicant has been effected at the end of the academic year by way of rotational transfer along with many others and a prior intimation was also given to the applicant three months prior to the order of transfer in Annexure-3 to keep him in readiness. The respondents have also denied that this transfer order at Annexure-3 was kept in abeyance. The applicant was aware of his transfer order and the fact that he would be relieved soon after a suitable substitute is posted against him. His substitute was posted on 12.3.1998 and copy of the order was issued to the office of the

S. Jam

Executive Engineer (respondent no.4). The respondents have stated that the applicant had filed a petition on 27.8.1996 for his retention at Koraput upto May 2000 and this was forwarded to Superintending Engineer, Co-ordination Circle, C.P.W.D., Calcutta, for due consideration in the letter at Annexure-R/1. But this was not considered as a substitute had already been posted in place of the applicant and the applicant was directed to hand over charge in the order dated 13.10.1998. It is further stated that according to the transfer policy which is at Annexure-R/3 tenure of Junior Engineer in soft area is four years and tenure can be extended maximum upto 2 years after due consideration of the Hard Case Committee. In the instant case the applicant has been continuing in his present station at Koraput since 9.5.1990 and already he has been shown considerable favour. Extension of further tenure of the applicant will vitiate the implementation of the transfer policy and many other persons whose cases have not been considered will come up for retention and will also initiate litigations. Under the circumstances it was not possible to allow the applicant to stay in the same station where his wife is serving. It is further stated that Government instructions provide that a Government servant should be allowed to work at the same station where his wife is serving as far as practicable. In view of the applicant's long stay at Koraput it was not found practicable to allow him to continue at Koraput. The applicant was transferred according to his service conditions and transfer liability. The transfer order was issued in July 1996 which was not mid-academic session. The applicant was aware that he has to move out of Koraput at any time because prior notice was also given. In view of this, the respondents have opposed the prayer of the applicant.

S. Sam

4. We have heard Shri A.K.Mohapatra, the learned counsel for the petitioner and Shri B.K.Nayak, the learned Additional Standing Counsel appearing for the respondents and have also perused the records.

5. It is submitted by the learned counsel for the petitioner that the petitioner does not want to continue at Koraput indefinitely. He wants to continue at Koraput only till May 2000 in view of the fact that if he is now relieved and he has to go to Calcutta, the education of his two daughters will be adversely affected. It is submitted, on the other hand, by the learned Additional Standing Counsel that on the basis of an All-India Competitive Examination one fresh recruit has been posted in place of the applicant under Executive Engineer, Bhubaneswar Central Division-I, C.P.W.D., Bhubaneswar, for his ultimate posting at Koraput. In view of this, the learned Additional Standing Counsel urged that the prayer of the applicant should be rejected.

6. From the pleadings of the parties we find that the applicant has continued at Koraput for more than nine years as against the normal tenure of four years for Junior Engineers which is extendable by two years in hard cases after consideration by Hard Case Committee. Even going by this period of six years the applicant has already stayed for nine years at Koraput. It is also not denied that the applicant's job carries transfer liability and in accordance with the rotational transfer policy he has been transferred. The position of law is well settled that in the matter of transfer the scope of interference by the Tribunal is limited. The Hon'ble Supreme Court have held that it is for the departmental authorities to decide who

S. Sam

will be transferred and when, and the Tribunal cannot normally interfere in the matter unless the transfer order is issued mala fide or in violation of statutory rules. The applicant has not stated that that the transfer order has been issued mala fide or it is in violation of any statutory rule or instructions. The respondents have, on the other hand, stated that the transfer order has been issued strictly in terms of the rotational transfer policy. In consideration of the above, we hold that the applicant has not been able to make out a case for the relief claimed by him.

7. In the result, the Original Application is held to be without any merit and the same is rejected but, under the circumstances, without any order as to costs. The stay order also stands vacated.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN

Somnath Som
28.7.99

AN/PS