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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 253 OF 1999
Cuttack, this the 17th day of November, 1999

Bipra Charan Samal 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
VICE-CHAIRMAN

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CORAM:

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

Bipra Charan Samal, aged about 55 years, son of late Chintamani Samal, presently working as Khalasi, Central Flood Forecasting Wireless Station, Central Water Commission, At/PO-Akhuapada, District-Bhadrak...
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Applicant.

Advocate for applicant - Mr.H.M.Dhal

Vrs.

1. Union of India, represented through its Chief Engineer, Mahanadi Eastern Rivers, Central Water Commission, Bhubaneswar.
2. Superintending Engineer, Hydrological Observation Circle, Central Water Commission, Government of India, Plot No.A-173, Sahidnagar, Bhubaneswar-7.
3. Executive Engineer, Eastern River Division, Central Water Commission, Bhubaneswar.
4. A.C.Dhal, Khalasi, Central Flood Forecasting Wireless Station, Jenapada, At/PO-Jenapada, District-Bhadrak Respondents

Advocate for respondents - Mr.B.Dash
A.C.G.S.C.

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

S. Som.
In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the transfer order dated 23.4.1999 at Annexure-1 so far as the applicant is concerned. The second prayer is for a direction that Class IV staff like the applicant are not liable for any transfer.

2. The applicant's case is that he is working as Khalasi which is a Class IV post and was

posted under Executive Engineer, Eastern River Division Central Water Commission, Bhubaneswar (respondent no.3), at Akhuapada in order dated 25.4.1990. In order dated 23.4.1999 at Annexure-1 he has been transferred from Akhuapada to Purusottampur. In the same order, respondent no.4, who was working as Khalasi at Jenapada Station, has been posted in place of the applicant at Akhuapada. On coming to know of this order of transfer the applicant made representation to Chief Engineer, Mahanadi Eastern Rivers, Central Water Commission, Bhubaneswar (respondent no.1) praying for cancellation of the transfer order on the ground of ailment of his wife. His representation was forwarded by the Site-in-Charge in his letter dated 7.5.1995. The applicant has challenged the order of transfer on the ground that it has been passed under colourable exercise of power and is violative of the guidelines of the transfer policy. The applicant has stated that under paragraph 3 of the transfer policy, Groups C and D personnel should not normally be transferred except under circumstances mentioned in the order. He has also stated that under the transfer policy when transfer of a staff from one station to another is unavoidable, then first those who volunteer for transfer should be transferred and thereafter persons with longest continued stay at their place of current posting should be transferred. The applicant has mentioned that even though he is continuing at Akhuapada for last nine years there are five other persons whose names have been mentioned who are working as Khalasi in the same

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Sub-Division for the last twenty years. It is submitted by the applicant that he has been subjected to hostile discrimination. On the above grounds, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that the Department is entrusted with the work like flood forecasting and gauge discharge observation in various river basins. This work is carried on in this region over 82 sites on Mahanadi and eastern rivers flowing through States of Orissa, Bihar, West Bengal and Madhya Pradesh. The work of the Department increases substantially during the monsoon and as such the Department reviews the requirements of the workcharged staff sitewise every year and accommodate the officials at these sites as per requirement. It is submitted that while transferring staff their place of choice on genuine and humanitarian grounds is taken into consideration. In the impugned order of transfer, besides the applicant eight other Khalasis have also been transferred and the applicant has been transferred to a site under the same Division and within the same State whereas he is liable to be transferred to any site under the Circle which may be in a different State. It is further stated that the applicant has been transferred considering his stay at the present station for a longer period in preference to his counterparts at that site. As regards the averment of the applicant regarding five other staff of the same Sub-Division who have put in 20 years in the same Sub-Division, the respondents have denied this averment and have indicated the period of stay of each of these ~~■■■■■~~

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six persons in different stations. It is further stated that the transfer order has been issued considering the representations filed by some other employees and while redressing their grievances employees with longer period of stay have been shifted. It is further stated that the representation filed by the applicant has been rejected in order at Annexure-R/2 in which it has been mentioned that the applicant should join his new place of posting and his request for posting at nearby site will be considered in due course. On the above grounds, the departmental respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has stated that from the counter of the respondents it is seen that one J.B.Sahu is continuing at Naraj from 1988 and P.Samal is working at Bhubaneswar since 1978. On the above grounds, he has again reiterated his averment that he has been subjected to hostile discrimination. Moreover, he has stated that the transfer is not because of administrative exigency and on the above grounds he has reiterated his prayer in the O.A.

5. We have heard Shri H.M.Dhal, the learned counsel for the petitioner and Shri B.Dash, the learned Additional Standing Counsel for the departmental respondents and have perused the records.

6. The second prayer is for a declaration that he is not liable to be transferred from his present place of posting as he is a Group-D staff. From the counter filed by the respondents it is clear that the applicant is in transferable job and he has been transferred from time to time. The respondents

have also given details of the stay of the six persons mentioned by the departmental respondents in their counter with their places of posting at different stations. From this it is clear that the Khalasis like the applicant are transferred from one station to another. In view of this, the prayer of the applicant that he should be declared to be holding a non-transferable job is held to be without any merit and is rejected.

7. As regards his transfer from Akhuapada to Purusottampur, it has to be noted that the applicant is at Akhuapada from 1990. He has thus completed nine years of stay at Akhuapada. The applicant's point is that certain other persons have stayed at their place of posting for longer period. From the counter of the respondents it appears that one J.B.Sahoo is working at Naraj from 1988 and P.Samal is working at Mechanical Sub-Division, Bhubaneswar, from 1978. Similarly, one B.Nayak is working at Bhubaneswar from 1984. From this it is clear that there are persons having longer stay in their present place of posting than the applicant. But the point for consideration is whether at Akhuapada where the applicant was posted there is any person who has longer stay than the applicant at Akhuapada. The applicant has not made any averment in this regard. The respondents have stated that the applicant had longer stay at Akhuapada and accordingly he has been transferred. The position of law is well settled that it is for the administrative Department to decide who will be transferred and where and unless the transfer is made mala fide or in

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violation of the statutory rule, the transfer order cannot be quashed. Merely because some persons had longer stay in their respective stations than the applicant, it cannot be held that the transfer order of the applicant has been issued mala fide. The fact of the matter is that the applicant has stayed for nine years at the same station. We also note that the respondents have informed the applicant that his prayer for being posted at a nearby site will be considered in due course. In view of this, we hold that the petitioner has not been able to make out a case for quashing the order of transfer. In consideration of the above, the applicant's first prayer is held to be without any merit and is rejected. But in view of the intimation sent to the applicant in Annexure-R/2, we direct the respondents that after the current field season is over, they should consider the representation of the applicant and transfer him to a nearby site as promised in the letter at Annexure-R/2.

8. In the result, the Original Application is disposed of in terms of the observation and direction given above but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)
17.11.99

VICE-CHAIRMAN