

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 355 OF 1999

Cuttack, this the 1st day of October, 1999

Hemanta Kumar Mohanty 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 Jam
(SOMNATH SOM)
VICE-CHAIRMAN 10.99

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CORAM:

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

.....
Hemanta Kumar Mohanty, aged about 49 years, son of late Dayanidhi Mohanty, Village Paradhip, P.O-Arisal, P.S-Delanga, District-Puri, at present Divisional Accountant in the office of the Executive Engineer, Boudh Irrigation Division, Boudh, District-Boudh ...

..... Applicant

Advocate for applicant - Mr.Akhaya Ku.Misra

Vrs.

1. Union of India, represented through Principal Accountant General (A&E), Orissa, Bhubaneswar.
2. Deputy Accountant General (Works Accounts), At-Office of Accountant General (A&E), Orissa, Puri Branch, Puri.
3. Alekh Pradhan, Senior Divisional Accounts Officer in the office of the Executive Engineer, RWSS Mechanical Division, Bhubaneswar, District-Khurda.

..... Respondents

Advocate for respondents - Mr.B.K.Nayak
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 21.7.1999 at Annexure-5 for being arbitrary and illegal and against the provisions of law.

2. The applicant's case is that he originally joined the office of Accountant General, Orissa as UDC in 1972 and was in due course promoted to the rank of Senior Accountant. He was selected for the post of Divisional Accountant and sent to Irrigation Department of State Government on deputation for a period of one year and was posted as Divisional Accountant in the office of Executive Engineer, Rengali Dam Division, Rengali, on 23.9.1996. On 20.10.1998 he was transferred to Boudh Irrigation Division where he joined in October 1998. On 21.5.1999 Deputy Accountant General (Works Accounts), respondent no.2 issued a letter sanctioning extension of deputation of the applicant from 19.9.1999 to 18.9.2000 inter alia providing that the applicant is permitted to continue on deputation till 18.9.2000 at Boudh Irrigation Division. But before completion of the above period, in the impugned order dated 21.7.1999 the applicant has been transferred from Boudh Irrigation Division to Upper Indravati Left Canal Division No.II, Dharamgarh. The applicant has stated that he had been allowed to avail LTC and he had booked tickets to go to New Delhi for checking up his eye and health of his old mother at New Delhi. He was preparing to go to New Delhi on 27.9.1999. The order of transfer has been issued to harass him. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

3. By way of interim relief the applicant has prayed to stay operation of the order dated 21.7.1999 till the disposal of the Original Application. In order dated 10.8.1999 the prayer for interim relief was disposed of with a direction that till 19.8.1999 the order of transfer of the applicant from Boudh to Dharamgarh is stayed subject to the condition that in

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case the successor of the applicant turns up for joining at Boudh on expiry of the transit time then the applicant should hand over charge to the successor and remain on leave and the departmental respondents will allow leave to the applicant for a few days. It was also made clear that in case the applicant succeeds in the OA, status quo ante will have to be restored.

4. Respondent nos. 1 and 2 in their counter have stated that due to dearth of Divisional Accountants in some of the Public Works Divisions and pending recruitment of qualified Divisional Accountants, some officials having requisite eligibility are posted on deputation as Divisional Accountants. Accordingly, the applicant has been appointed as Divisional Accountant on deputation on an application made by him and on his being selected for the post. His first posting as Divisional Accountant was in the office of Executive Engineer, Rengali Division in September 1996. In this order of appointment at Annexure-1 to the OA it was clearly mentioned that he is liable for transfer/repatriation depending upon administrative convenience at any time. It is further stated that the applicant represented for transfer to Boudh or Mayurbhanj District in his letter dated 7.9.1998 (Annexure-R/1) and accordingly in order dated 20.10.1998 (Annexure-2) he was transferred to the office of Executive Engineer, Boudh Irrigation Division. The departmental respondents have admitted that in order at Annexure-3 his deputation was extended for one year from 19.9.1999 to 18.9.2000. But it has been stated that the extension is granted only for the deputation period and not for a particular place of posting where the applicant was working at the time of extension of deputation. The departmental respondents have further stated that Public Works Divisions of the State are graded once in every year depending upon the load of

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construction work, expenditure involved and the load of last three years work. This gradation is done in accordance with the guidelines prescribed by Comptroller & Auditor-General of India. Boudh Irrigation Division was graded as a Senior Grade Division during June 1999 and due to above gradation, posting of Divisional Accounts Officer/Divisional Accountant was also made to shoulder higher responsibility in accordance with the guidelines prescribed by Auditor General of India. The departmental respondents have stated that the guidelines are confidential in nature and can only be shown to Tribunal if such a direction is given. As a result of such gradation, transfer and posting were made in the month of June/July every year in respect of Divisions upgraded/downgraded. Accordingly, the applicant was transferred to Dharamgarh as the Boudh Division where he was working was upgraded as a Senior Grade Division and required posting of a Senior Grade Divisional Accounts Officer and accordingly respondent no.3 has been posted in place of the applicant in the upgraded Boudh Irrigation Division. The departmental respondents have stated that the transfer of the applicant has been done in public interest and there is no necessity of calling for option from the applicant. They have also stated that before making the chain of transfer the Election Commission was consulted and after receipt of their clearance transfer was ordered. It is further stated that against the impugned order of transfer the applicant has filed a representation to respondent no.2. But even before consideration of his representation he has rushed to the Tribunal and therefore the present application is premature. On the above grounds, the respondents have opposed the prayer of the applicant.

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5. The applicant has filed a rejoinder in which it has been stated that the applicant is working in a State Government office and therefore he is on deputation and for his transfer to another deputation post under the State Government, his consent was required to be taken under the rules. It is further stated that financial year is from first April to 31st March and after 31st March upgradation and downgradation of Divisions take place. The applicant's deputation has been sanctioned against Boudh Irrigation Division from 19.9.1999 to 18.9.2000 in order dated 21.5.1999, i.e., well after close of the financial year 1998-99 when the status of Boudh Irrigation Division was known and after the sanction of the deputation there was no occasion for transferring him to Dharamgarh in the impugned order dated 21.7.1999. Therefore, it is urged, the plea of upgradation of Boudh Division taken by the departmental respondents is incorrect. On the above grounds, the applicant has reiterated his prayer in his OA.

6. The departmental respondents have filed showcause and the applicant has filed a counter to the showcause where various other arguments have been taken by both sides in support of their stand. These will be considered while considering the oral submissions of the learned counsels for both sides.

7. Respondent no.3, the successor of the applicant has been issued with notice but he has not appeared nor filed counter.

8. We have heard Shri Akhaya Kumar Mishra, the learned counsel for the petitioner and Shri B.K.Nayak, the learned Additional Standing Counsel for the respondents and have also perused the records.

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9. The first point urged by the learned counsel for the petitioner is that the applicant is an employee in the office of Accountant General, Orissa and he has been deputed to the State Government with his consent. In order dated 21.5.1999 the applicant's deputation against Boudh Irrigation Division has been sanctioned from 19.9.1999 to 18.9.2000. In the memo to this order, the concerned persons including the applicant have been requested to furnish their willingness/unwillingness option to continue in the deputation posts to the office of respondent no.2 at an early date. It is submitted by the learned counsel for the petitioner that from this it is clear that the deputation of the applicant has been sanctioned for the above period for working in Boudh Irrigation Division and therefore without his option he could not have been legally transferred to Dharamgarh in the impugned order. In support of his contention the learned counsel for the petitioner has relied on the case of Bhagwatiprasad G.Bhatt v. State of Gujarat and others, decided by the Hon'ble Gujarat High Court on 20.7.1976. A copy of this judgment has been filed by the learned counsel for the petitioner. In that case the petitioner was a Sub-Inspector of Police who questioned the validity and legality of his deputation-cum-transfer to Civil Defence Organisation. The Hon'ble High Court held that the Police Department and Civil Defence Organisation are two different Departments set up under different statutes and deputation and transfer differ basically in the sense that transfer can be made only to an equivalent post in the same cadre whereas deputation may be to any other Department where even equivalence may not have been determined. While transfer falls within the right of the master and is an incident of service and can only be

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challenged only on the ground of mala fide and violation of statutory rules relating to transfer, deputation can only be with consent because the employee joins a Department to render service in that Department and he cannot be made ^{to} serve somewhere else, may be in a post lower than or equivalent to his post. If such a power is conceded, contract of service may turn into a contract of slavery. In the instant case admittedly the applicant has been sent out of his parent organisation to work under the State Government in a post to which he has gone on deputation on his own application and representation. The order extending deputation from September 1999 to September 2000 clearly indicates that extension of deputation has been made against ^{his} post. In the memo the applicant has been asked to convey his willingness to remain on deputation for the above period against that post. This aspect of the submission of the learned counsel for the petitioner must therefore be accepted.

10. The next question which arises for consideration is that given the above situations, are respondent nos. 1 and 2 entitled to transfer the applicant from one deputation post at Boudh to another deputation post at Dharamgarh without his consent? The applicant was sent on deputation in the order at Annexure-1, filed by the applicant himself. In this order it is clearly written that the applicant is liable for transfer/repatriation depending on administrative convenience at any time. This shows that the original deputation of the petitioner to Rengali Dam Division was subject to the condition that he is liable for transfer on administrative convenience at any time. From this it is clear that the applicant has gone on deputation as Divisional Accountant with the clear understanding that during his period of deputation he is liable to be

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transferred from one deputation post to another and therefore it cannot be said that before transferring the applicant from Boudh Irrigation Division to Dharamgarh his consent should have been obtained. This contention of the learned counsel for the petitioner is therefore held to be without any merit and is rejected.

10. The next question which arises for consideration is, granting that respondent nos. 1 and 2 had the power to transfer the applicant from one deputation post to another without obtaining his consent, whether in this case transfer has been done in accordance with rules and for bona fide consideration. The respondents have pointed out that Boudh Irrigation Division has been upgraded to a Senior Grade Division and therefore a Senior Grade Divisional Accounts Officer had to be posted there and accordingly respondent no.3 has been posted to upgraded Boudh Irrigation Division. The applicant has pointed out in paragraph 3 of his counter to the showcause filed by the respondents that Boudh Irrigation Division was a Senior Grade Division since 1997-98. But in spite of that he was transferred to Boudh Division in order dated 20.10.1998 at Annexure-2 and his deputation to Boudh Irrigation Division was extended from September 1999 to September 2000. We have no material before us to take a view whether Boudh Irrigation Division was upgraded as a Senior Grade Division from 1997-98 prior to posting of the applicant there or after the end of the financial year 1998-99 when the applicant was transferred from Boudh to Dharamgarh. Even if we go by the applicant's assertion that Boudh Irrigation Division was upgraded to a Senior Grade Division from 1997-98 and the applicant was continued there, that does not give any right to the applicant to continue in an upgraded Division. The law is well settled that a

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a deputationist has no vested right to continue in a deputation post. In this case in the original order of deputation of the applicant to Rengali Dam Division, it was clearly indicated that during the period of deputation he is liable to be transferred or repatriated. As this order specifically mentions transfer and repatriation, it is clear that this means that during the period of deputation he could be transferred from one Division to another Division and as Boudh Division, according to both the parties, was upgraded as a Senior Grade Division and a Senior Grade Accounts Officer had to be posted there, the applicant cannot claim that he should be allowed to continue in Boudh Irrigation Division.

11. The next point urged by the learned counsel for the petitioner that the transfer order is not a speaking order and does not indicate the reasons for transfer. All transfers which are not made allowing the representations of persons who are transferred, are made in the exigency of public service and it is not necessary to indicate reasons for transfer in the order of transfer. As a matter of fact in no order of transfer reasons for transfer are indicated. This contention of the learned counsel for the petitioner is held to be without any merit and is rejected.

12. It has been further submitted by the learned counsel for the petitioner that in the standard terms of deputation of Divisional Accountants, a copy of which has been filed by him, there is no mention that such Divisional Accountants are liable to be transferred from one post to another post under the State Government.

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But as we have already noted, in the original order of deputation this has been mentioned and therefore even in the absence of such a clause in the standard terms of deputation, the departmental authorities are not precluded from transferring the deputationist from one post to another.

13. In the result, therefore, we hold that the applicant has not been able to make out a case for the relief asked for by him. The application is therefore held to be without any merit and is rejected. No costs.

14. Before parting with the case we take note of the averments made by the respondents that against the order of his transfer the applicant has filed a representation before respondent no.2 and even before any order could be passed on such representation he has rushed to the Tribunal. In view of this, we direct respondent nos. 1 and 2 to consider the representation of the applicant sympathetically and strictly in accordance with the existing rules and instructions and to dispose of the same, within a period of thirty days from the date of receipt of a copy of this order, without being influenced by any observation made by us in this order and the fact that the applicant has approached the Tribunal in the present OA.

(G.NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)

VICE-CHAIRMAN