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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 383 OF 1999
Cuttack this the 16th day of December, 1999

Achyut Purohit

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

16-12-99
(G.NARASIMHAM)
MEMBER(JUDICIAL)

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ORIGINAL APPLICATION NO. 383 OF 1999
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CORAM:

THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sri Achyut Purohit

S/o. Narayan Purohit, At/PO: Bakti

Via: Salebhata, Dist: Bolangir

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Applicant

By the Advocates : Mr.P.K.Padhi

-Versus-

1. Union of India represented through it's Chief Post Master General, Orissa Circle, At/Po: Bhubaneswar, Dist: Khurda-751001
2. Post Master General(Sambalpur Region)
At/Po: Sambalpur, Dist:Sambalpur
3. Superintendent of Post Offices,
Bolangir Division, At/Po/Dist: Bolangir
4. Champaswar Mishra, L.S.G. P.A.
At/Po: Bolangir, H.O., Dist: Bolangir
5. Birendra Kumar Dharua, L.S.G.(P.A.) At/Po: Bolangir
Head Post Office, Dist: Bolangir
6. Lambodhar Misra, L.S.G.(P.A.), At/Po: Bolangir Head
Post Office, Dist: Bolangir
7. V.Ramesh Babu, Superintendent of Post Offices,
Bolangir Division, At/Po/Dist: Bolangir

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Respondents

By the Advocates : Mr.S.Behera,
Addl.Standing Counsel
(Central)
(For Res.1 to 3 & 7)

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MR.G.NARASIMHAM, MEMBER(JUDICIAL): In this application for quashing the order of transfer of the applicant under Annexure-2 dated 1.5.1999 passed by Res.3, applicant, a Postal Assistant, Bolangir challenges his order of transfer to Lachhipur on the ground that at Bolangir he has not completed his usual tenure of four years and the transfer was effected with malice inasmuch as Res.4 to 6 who are continuing at Bolangir Head Office since last several years have not been transferred.

Respondents 4 and 6 though duly noticed had not entered appearance. Res.4 and the Department representing ~~and R.7~~ Res.1 to 3/filed separate counters.

According to departmental respondents the applicant has been serving at Bolangir since 3.8.1986 in the cadre of Postal Assistant. His native village Bakti is only 10 kms. away from Lachhipur, the place of his transfer. At Lachhipur village Bramhin community forms more than 50% of the population and there is rift between this community and the Scheduled Caste community who are about 10% of the population. In Lachhipur Post Office, one Bira Dip, a scheduled caste man was serving as Sub-post Master and in order to protect him from the rift the Department thought fit to relieve him immediately and consequently the applicant, who belongs to a bramhin community and whose village is hardly 10 kms. away from Lachhipur was transferred in the interest of administration and there was no malice in passing such order of transfer which was passed along with transfer of many other employees. Respondent 5 had only completed two years term at Bolangir. Hence he was not considered for transfer.

Services of Res.4 and 6 are necessary at Bolangir from the administrative point of view.

Applicant has not filed any rejoinder to the counter.

3. I have heard Shri P.K.Padhi, learned counsel for the applicant and Shri S.Behera, learned Addl.Standing Counsel appearing for the respondents. Also perused the records.

Since no rejoinder has been filed I presume the averments made in the counters are true. It is not as though the applicant was transferred before completion of his usual tenure. He has been at Bolangir since 1986. Moreover, Lachhipur is 10 kms. away from his native place and his transfer was effected in the interest of administration. Barring allegation of malice, applicant has not cited any instance of malice. Law is well settled that when malice is pleaded, the facts on which a case ~~is~~ of malice is made ~~over~~ have to be pleaded, because, malice must be satisfactorily established on proved or admitted facts. This apart, as per decisions pronounced ^{not} by the Apex Court now and then, order of transfer can be interfered with unless the same is contrary to any statutory provision or passed in exercise of malice.

I am, therefore, not inclined to interfere with the impugned order of transfer.

4. Shri Padhi, learned counsel at this stage submitted that there is vacancy at Dungenpalli and the applicant could be transferred to Dungenpalli instead of Lachhipur and direction to that effect may be issued to the Department. I am not inclined to issue any such direction even if there is vacancy at Dungenpalli as submitted by

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Shri Padhi. It is for the Department to consider which employee has to be posted where. Courts/Tribunals, as already indicated cannot interfere with the order of transfer unless the same is passed out of malice and contravenes statutory provisions.

In the result, the applicant is held to be without any merit and the same is dismissed, but without any order as to costs.

MEMBER (JUDICIAL)

B.K. SAHOO

16.12-95
(G.NARASIMHAM)
MEMBER (JUDICIAL)