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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 553 OF 1999.

Cuttack, this the 3rd day of March, 2000.

NIRANJAN PANDA.

....

APPLICANT.

VRS.

UNION OF INDIA & ORS.

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.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
3.3.2000

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO:553 OF 1999.

Cuttack, this the 3rd day of March, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN.

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SHRI NIRANJAN PANDA,
Aged about 46 years,
S/o. Late Sridhar Panda,
At. Kalyan Nagar, Po: Angargadia,
Dist: Balasore, PIN- 756 001.,
at present working as Senior Auditor,
in the Office of the JCDA(R&D),
No.1, OT Road, Post/Dist. Balasore. ... APPLICANT.

By legal practitioner: M/s. A. S. Nandy, T. Sinha, P. K. Mallick,
Advocates.

- Versus -

1. Controller of Defence Accounts (R&D),
L-Block, Church Road, New Delhi-1.
2. The Controller General of Defence Accounts,
Ramkrishna Puram, West Block-5, New Delhi-66.
3. The Joint Controller of Defence Accounts
(Research & Development) No.1, OT Road,
Balasore-756 001.

.... RESPONDENTS.

By legal practitioner: Mr. A. K. Bose, Senior Standing Counsel.

S. Som

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under section 19
of the Administrative Tribunals Act, 1985, applicant has
prayed for quashing his order of transfer dated 15.6.99
at Annexure-1.

2. Case of the applicant is that he joined on 30.7.1976 as an Auditor under the Controller of Defence Accounts (Factories) at Calcutta and posted at Chandipur in the District of Balasore. In 1986, he was transferred and posted at Balasore under the Controller of Defence Accounts (Research & Development) and has been serving there as Senior Auditor on promotion since April, 1987. Applicant's wife is also working as Assistant Teacher in Sobharampur P.S.M.E. School in Balasore Town under the State Government. Applicant has been transferred from Balasore to Calcutta in the impugned order dated 15.6.1999. The intimation of the transfer was given to the applicant by the Accounts Officer but no written order was officially issued to him. Applicant has stated that the long standing practice in Controller of Defence Accounts (R&D) is that below the rank of Section Officer persons are not transferred unless such transfer is sought voluntarily or on administrative grounds. Applicant has stated that he has not asked for such transfer nor was there any administrative reason for his transfer from Balasore to Calcutta. On receipt of the order of transfer, he made a representation and sent several reminders but the same are still pending. In the context of the above facts, applicant has come up in this petition with the prayer referred to earlier.

3. Respondents, in their counter have stated that applicant is a resident of Balasore District and he was appointed as an Auditor on 30.7.1976 and was posted in

the Office of Accounts Officer, P. E. E. Estt. Balasore at Chandipur. He was transferred to another post in the same station in March, 1987 and has been continuing there. According to the terms and conditions of his employment, he is liable to be transferred and posted anywhere in India. Chandipur where he has served for nearly 11 years, prior to his posting in the Office of the JCDA (R&D), Balasore is only at a distance of 12 KMs from Balasore and therefore, can not be treated as a different station. Moreover, he has been serving in his home district for about 23 years in the same station. It is further stated that applicant has never intimated to the Department that his wife is serving and in the service record of applicant, there is no mention that his wife is employed. As regards the averment that the applicant was not intimated about his transfer, Respondents have stated that applicant noted the contents of the transfer order under his dated signature on 5.8.1999 on the body of the transfer order. He has also drawn his TA/DA advance on 7.10.1999 for joining his new place of posting at Calcutta. Applicant has already been relieved in order dated 8.10.1999 which was sent to his home address through Regd. Post as the applicant was absent without sanction of leave or permission from competent authority. Respondents have stated that there is no such standing practice as claimed by applicant that the cadre below the rank of SO are not transferred unless such transfer is asked for voluntarily or on administrative grounds. They have stated that applicant

has the transfer liability through out the country. It is further stated that the representation of the applicant has been considered but has not been acceded to. It is also stated that at the time of entry in service in the Department, the applicant has given an undertaking to serve in any part of India. On the above grounds, the Respondents have opposed the prayer of the applicant.

4. In his rejoinder, applicant has re-iterated his averments made in the Original Application and it is not necessary to repeat the same. He has stated that his wife is suffering from Bronchial Asthma and is under treatment and his 70 years old mother is also suffering from Hypertension. It is further stated that two children of applicant are continuing their studies in Class X and Class-VII in the Central School, at Balasore and such transfer would affect their studies. Applicant has stated that mere receipt of advance TA/DA does not preclude the applicant to move the competent authority for cancellation of his order of transfer. It is also stated that Auditors who have been working for more than a decade at Calcutta Office, have not been transferred at all but the applicant has been picked up for transfer. It is further stated that no reliever has joined in place of applicant and therefore, he should be allowed to continue at Balasore.

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5. The matter was originally posted to 20.1.2000 for final disposal, on which day, learned counsel for the petitioner wanted two weeks time to obtain instruction and file rejoinder, if any. In view of this, the matter was listed to 10.2.2000 for completion of pleadings. On 10.2.2000 it was noted that pleadings have been completed and the matter was adjourned to 16.2.2000 for hearing and final disposal. On that date, learned counsel for the applicant wanted a short adjournment to argue the matter and in view of this, the matter was adjourned to 23.2.2000 peremptorily to be taken up even in the absence of learned counsel of either side. On 23.2.2000, on behalf of learned counsel for the petitioner a further adjournment was asked for but as the hearing was fixed to 23.2.2000 at the instance of learned counsel for the petitioner himself, prayer for further adjournment was rejected. Therefore, learned Senior Standing Counsel Mr. A. K. Bose, appearing for the Respondents was heard and hearing was concluded. It was also indicated that learned counsel for applicant, if he is so advised may file written note of submission by 28.2.2000 with copy to other side but no written note of submission has been filed.

6. From the pleadings of the parties, it is clear that ever since his joining in Govt. service, in 1976, applicant has been continuously working in his Home

district at Balasore or at Chandipur which is within a distance of 12 KMs. The post occupied by applicant carries all India transfer liability. Applicant has merely urged that there is a long standing practice that below the level of SO staffs are not transferred except when they seek transfer voluntarily or they are transferred on administrative grounds. It is stated by the applicant that he has not sought transfer voluntarily and there is no administrative ground for transferring him from Balasore to Calcutta. Respondents have denied that there is any such practice as urged by applicant. Moreover, the very fact that the applicant has continued in his home district for 23 years even though occupying a post which carries All India transfer liability proves that there is administrative necessity. Continuing a person in such a post in his home district for a long period would naturally give rise to similar claim for others and it is, therefore, for the administrative interest to transfer the applicant. As regards the averments made by the applicant that his wife is serving under the State Govt. at Balasore and therefore, under the Rules, quoted by him in the original Application he should be retained at Balasore, I am not inclined to accept the above contention because instructions provide that husband and wife serving in the same station under the Govt. should be accommodated to the extent possible. In the instant case applicant has remained at Balasore for 23 years and he can not therefore claim that because

his wife serving at Balasore, he should continue to be at Balasore for all times to come. As regards the difficulties with regard to his children's education and the old ~~age~~ age of his mother, these are matters to be considered by the Departmental Authorities and the Tribunal can not interfere in the transfer order on the above grounds. It is also to be noted that applicant has applied for and has got his TA/DA advance presumably for the purpose of joining his new station at Calcutta - otherwise he would not have drawn the advance of TA/DA. In view of the above, I hold that the applicant has not been able to make out a case for quashing the order of transfer dated 15.6.1999 at Annexure-1:

7. In the result, the Original Application is rejected but in the circumstances of the case without any order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
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KNM/CM.