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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 145 OF 2000
Cuttack, this the 17th day of May, 2000

Dr.Jagannath Das 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*

J.S.D.
(J.S.DHALIWAL)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

17.5.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACKBENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI J.S.DHALIWAL, MEMBER(JUDICIAL)

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Dr.Jagannath Das, aged about 49 years, son of late M.Das,
At-Kalyani Nagar, P.O/PS/Dist.Cuttack, at present working as
Chief Medical Officer, Central Government Health Scheme
Dispensary, AG Colony, Unit-IV, Bhubaneswar, District-Khurda
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Applicant

Advocate for applicant - M/s Sisir Das
A.K.Mohanty

Vrs.

1. Union of India, represented through its Secretary,
Ministry of Health & Family Welfare, Nirman Bhawan, New
Delhi-11.
2. Accountant General (E&AE),
Orissa, At/PO-Bhubaneswar, Dist.Khurda.
3. Deputy Director of CGHS Dispensary, AG Colony, Unit-IV,
Bhuabaneswar, District-Khurda

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Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has prayed
for a direction to the respondents to allow the applicant to
resume his duties at CGHS, Bhubaneswar, as Chief Medical
Officer on 9.3.2000 and to quash the order dated 8.3.2000 at
Annexure-4 cancelling his posting at Bhubaneswar.

S.Som.
2. The applicant's case is that in order dated
15.2.2000 at Annexure-1 he was transferred from CGHS, Patna,
to CGHS, Bhubaneswar. From the order itself it is clear that
this transfer was not made on his request, as has been
mentioned in case of some other persons transferred in this

order. The applicant got himself relieved from Patna on 6.3.2000 and came with his bag and baggage and submitted his joining report to respondent no.3 at 9.30 A.M. on 9.3.2000. His joining report was accepted. It is stated that in the transfer order at Annexure-1 respondent no.3 has been transferred from Bhubaneswar to Calcutta. The applicant, however, was not allowed to join at Bhubaneswar and at 1.00 P.M. the joining report was returned back to him with an endorsement that the order of his transfer from Patna to Bhubaneswar has been cancelled in order dated 8.3.2000 at Annexure-4. The applicant has stated that in order to prevent him from joining, respondent no.2 at the instance of respondent no.3 has approached the Ministry and got the applicant's order of transfer from Patna to Bhubaneswar cancelled. It is stated that the intimation of cancellation has been received by FAX message by respondent no.2 and from a copy of the FAX message it is clear that this has been received at 12.45 PM whereas the applicant has joined at 9.30 AM. In the context of the above facts, the applicant has come up with the above prayer.

S. J. S.
3. The respondents in their counter have stated that the applicant had earlier worked at CGHS, Bhubaneswar. While he was working at CGHS, Bhubaneswar, as Medical Officer he was involved in a criminal case started by Central Bureau of Investigation in which chargesheet was filed and the case is still pending. In consideration of this, the applicant was transferred from CGHS, Bhubaneswar, to CGHS, Patna. The respondents have stated that it is apprehended that if he is again posted at Bhubaneswar, he may tamper with the records and influence the witnesses, and that is why respondent no.2 took up the matter with the Ministry and the applicant's order of transfer from Patna to

Bhubaneswar was cancelled. The respondents have stated that there is no mala fide or illwill in the above action. This has been done only for the purpose of ensuring that the criminal case against the applicant proceeds smoothly. It is also submitted that during his earlier spell of working at Bhubaneswar, a departmental proceeding was initiated against him and punishment of stoppage of increment was imposed on him. In the context of the above facts, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has submitted that against the punishment of stoppage of increment he has filed an Original Application before the Tribunal which is pending and the order of punishment has been stayed. As regards the CBI case it has been stated that because of enmity of respondent no.3 towards the applicant a false case has been instituted against him. In any case all the witnesses of the prosecution have been examined in that case and the prosecution case has been closed, and the case has been posted for recording the statement of the accused. Therefore, the plea that by his posting at Bhubaneswar, the applicant will try to influence the witnesses and tamper with the documents is without any merit. It is also submitted that the applicant was not transferred from CGHS, Bhubaneswar to CGHS, Patna because of the criminal case. From CGHS, Bhubaneswar he was initially transferred to RHO, Bhubaneswar, where he worked for sometime and thereafter he was transferred to Patna. On the above grounds the applicant has reiterated his prayer in the OA.

5. We have heard Shri S.Das, the learned counsel for the petitioner and Shri A.K.Bose, the learned

Senior Standing Counsel for the respondents and have also perused the records.

6. The admitted position is that the applicant was transferred, not on his own request from Patna to Bhubaneswar in order dated 15.2.2000. In the same order respondent no.3 has also been transferred from CGHS, Bhubaneswar to CGHS, Calcutta. From this it is clear that copy of this order must have been served on respondent no.3. The applicant has been relieved three weeks after the transfer order on 6.3.2000 and has come with his bag and baggage to Bhubaneswar and has reported for joining on 9.3.2000. If the posting of the applicant to CGHS, Bhubaneswar, was found objectionable from any point of view, respondent nos. 2 and 3 should have approached respondent no.1 immediately after the transfer order was received, for cancelling the transfer order thereby sparing the applicant the harassment of coming all the way from Patna to Bhubaneswar and learning only at Bhubaneswar that the order of his transfer from Patna to Bhubaneswar has been cancelled on 8.3.2000.

7. The learned counsel for the petitioner has prayed that the cancellation order should be quashed. We are not agreeable to do so because the full facts of the CBI case are not before us. In any case it is for the departmental authorities to take a view on consideration of the totality of the circumstances and if the Ministry has taken a view that the applicant should not be posted to CGHS, Bhubaneswar, then we do not find anything illegal about it. In view of this, the prayer of the applicant for quashing the cancellation order at Annexure-4 is held to be without any merit and is rejected. Consequently, his prayer for accepting his joining report dated 9.3.2000 also stands

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rejected.

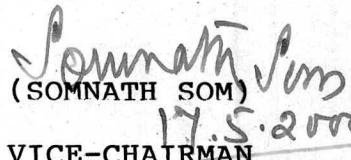
8. But the fact of the matter is that in the entire process the applicant has been harassed and this aspect should be taken into consideration by the Ministry and he should not be made to go back to CGHS, Patna. The Ministry is therefore directed to issue an order posting the applicant somewhere in Orissa within a period of fifteen days from the date of receipt of copy of this order. The applicant is also directed to exercise his option and indicate three places of posting outside Orissa. In case there is no vacancy at present in Orissa, then the respondents should give a posting to the applicant after taking into consideration his option within a period of seven days from the date of receipt of the option by the Ministry. Needless to say that the period from the date of relief of the applicant from Patna on 6.3.2000 till his joining in the new place of posting should be regularised by extending the joining time.

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


(J.S.DHALIWAL)

MEMBER (JUDICIAL)

17.5.2000


(SOMNATH SOM)

VICE-CHAIRMAN

17.5.2000