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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 263 OF 2000  
Cuttack this the 9th day of January/2001

L. Kindo

...

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 ? No .

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
9/1/2001

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 263 OF 2000  
Cuttack this the 9th day of January/2001

CORAM:

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

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Sri Livinus Kindo, I.A.S.,  
55 years, S/o. Maichel Kindo,  
Malidihi, Rajgangpur,  
Dist-Sundargarh - at present  
a Member of the I.A.S. posted as  
Transport Commissioner (under orders  
of transfer to the post of Chief  
Electoral Officer, Orissa and ex-Officio  
Principal Secretary to Govt., Home  
(Election) Department, Bhubaneswar

...

By the Advocates

Applicant

M/s. A.K. Mishra  
J. Sengupta  
B.B. Acharya  
D.K. Panda  
P.R.J. Dash  
G. Sinha

-VERSUS-

1. Union of India through its Secretary,  
Ministry of Personnel and Administrative Training &  
Reforms, New Delhi
2. State of Orissa through Secretary to Govt. of  
Orissa, G.A. Department, Bhubaneswar
3. Government of Orissa through its Secretary,  
Department of Commerce and Transport (Transport)  
Bhubaneswar
4. Director (Admn.) cum Principal Secretary,  
Office of the Election Commission of India,  
Nirachansadan, Ashoka Road, New Delhi

...

By the Advocates

Opp. Parties

Mr. S.B. Jena, A.S.C.  
(Res. 1 and 4)  
Mr. K.C. Mohanty,  
Govt. Advocate (Res. 2 & 3)

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ORDER

MR. SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section  
19 of the Administrative Tribunals Act, 1985, the petitioner has  
prayed for quashing the order dated 18.5.2000 (Annexure-1),  
transferring him from the post of Transport Commissioner,

Cuttack and posting him as Chief Electoral Officer, Orissa and ex-Officio Principal Secretary to Government of Orissa Home (Election) Department. His second prayer is for a direction to Opposite Party No.1, viz., Secretary, Department of Personnel and Administrative Training and Reforms, New Delhi, to post the applicant in any other available post.

2. By way of interim relief the applicant had prayed that respondents should be directed not to take any coercive action against him. Certain orders were passed by this Tribunal from time to time. But it is not necessary to go into that aspect of the matter at this stage, because the admitted position is that the applicant has in the meantime joined as Chief Electoral Officer in the later part of July, 2000, and because of this, learned Government Advocate had submitted that this Original Application has become infructuous. It was submitted at that time by Shri A.K.Mishra, the learned counsel for the petitioner that as legality of the order of his transfer is in question, merely by joining of the applicant in the post, to which he has been transferred, his right to challenge the order of his transfer from the post of Transport Commissioner to the post of Chief Electorate Officer is not extinguished, and therefore, he had asked for adjudication of the matter.

3. Lawyers have abstained from Court work w.e.f. 7.12.2000. We have been told from time to time that they will be attending Court shortly. But it has not been done and abstaination from Court work has gone on for more than a month. So far we have been accommodating the Members of the Bar by taking up only ~~such~~ <sup>few</sup> such cases for disposal where applicants present in person wanted no early adjudication of the matters. But as there has been/indication

as to how long abstaination would continue, it is not possible to drag on the matter indefinitely. None appeared for either of the parties when called. We therefore, did not have the benefit of hearing either of the counsels. Perused the records.

4. Respondents have filed their counter opposing the prayer of the applicant. For the purpose of disposing of this Application it is not necessary to go into too many facts of this case. The admitted position is that applicant is a direct recruit I.A.S. of 1973 batch and at the relevant time he was in the rank of Principal Secretary to Government in the scale of Rs.22,400-24,500/-. He was holding the post of Transport Commissioner, which is a cadre post when in impugned order dated 18.5.2000 vide Annexure-1 he was transferred to the post of Chief Electoral Officer. The petitioner has challenged this order of transfer on various grounds which are discussed below.

5. The first ground urged by the applicant in support of his contention as at Page-3 of the Original Application is that he could not have been posted as Chief Electoral Officer without his consent. Deputation of cadre officer is governed by Rule-6 of Indian Administrative Service (Cadre) Rules, 1954. Under this Rule, a cadre officer with the concurrence of the State Government and the Central Government can be deputed for service under the Central Government or any other State Governments or under a Company, Society or Body of individuals (whether incorporated or not) which is wholly or substantially owned or controlled by the State Government, Municipal Corporation or Local Body by the State Government on whose cadre he is borne. It is, however, provided that a cadre officer may also be deputed for service to an International Organisation, an

autonomous body not controlled by the Government or a Private Body by the Central Government in consultation with the State Government, on whose cadre he is borne, provided that no cadre officer shall be deputed to any such organisation except with his consent. The case of the applicant is that as Chief Electoral Officer he has to work directly under the control of Chief Election Commissioner of India, which is a high Constitutional authority and is not under the control of the State or the Central Government. Therefore, his transfer to the post of Chief Electoral Officer tentamounts to his deputation to work under the Chief Election Commissioner of India, which is an autonomous authority and therefore, prior to his deputation, his consent was required to be taken under Rule-6, as noticed by us above. This contention is wholly without any merit and is rejected, firstly, because, the post of Chief Electoral Officer to which the applicant has been transferred is a cadre post in the Orissa Cadre of the Indian Administrative Service. This is clear from a reference to Indian Administrative Service (Fixation of Cadre Strength) Regulation 1955, in which Schedule No.15 lists out the cadre posts under the State Government in Orissa cadre and in this the post of Chief Electoral Officer is mentioned. From this it is clear that the applicant has been posted in a post which is a cadre post in Orissa Cadre. The State Government has every right to transfer him from one cadre post to another cadre post. The second ground on which this contention has to be rejected is that for deputation to any International or Autonomous Organisation, as mentioned in Clause-II of Rule-6 of Indian Administrative (Cadre) Rules, deputation to such organisation has to be made by the Central

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Government and not by the State Government. The posting of the applicant in a cadre post is not a deputation. Therefore, this contention is held to be without any merit and the same is rejected, and it is held that for the posting of the applicant as Chief Electoral Officer, it is not necessary to obtain his consent. The third contention of the petitioner is that for being posted in the post of Chief Electoral Officer, the State Government should have obtained clearance from the Chief Election Commissioner of India and no such clearance was obtained by the State Government before his posting order was issued. Even if it is taken to be correct, this is a matter entirely between the State Government and the Chief Election Commissioner of India and so long as the Chief Election Commissioner does not object to the posting of the applicant, he can have no say in the matter. Moreover, Respondents have stated in Para-8 of their counter that State Government furnished a panel stating three names of I.A.S. officers to Election Commissioner of India for obtaining their views prior to the order of the State Government appointing any one officer out of them for his posting as Chief Electoral Officer. Copy of this letter of the State Government is dated 16.3.2000 which is at Annexure-R/2. From this it is clear that Chief Election Commissioner of India was consulted and with their approval only the applicant has been posted as Chief Electoral Officer. Applicant has made certain other averments complaining against his posting as Chief Electoral Officer stating that the post is outside the mainstream of Administration and as he would be retiring in the year 2005, he will be out of the mainstream for quite sometime. These averments are absolutely without any



merit and we are constrained to observe that such submissions by an officer of the rank of Principal Secretary must be taken to be frivolous. It is not for the officer concerned to decide as to which post he will hold or whether that post is within so called "mainstream" of the Administration. This contention is also held to be without any merit and the same is therefore, rejected. In the result, therefore, we hold that transfer of the applicant from the post of Transport Commissioner to the post of Chief Electoral Officer is legal and the prayer of the applicant for quashing the order of transfer dated 18.5.2000 (Annexure-1) is held to be without any merit and the same is rejected.

6. The second prayer of the applicant, as noted by us earlier, is for a direction to Opposite Party-1 to post him to any other available vacancy. OP No.1 is the Secretary to the Department of Personnel and Administrative Training and Reforms. We presume that by this prayer the applicant wants that he should be sent on deputation to be posted in any post under the control of the Central Government. Approaching the Tribunal with such a prayer is frivolous; more so, it is barred under Rule-10 of the Central Administrative Tribunal (Procedure) Rules, 1987 because of plural remedies. Moreover, if the applicant wants to go on central Deputation, it is for him to make representation to the State Government and he cannot approach the Tribunal directly with such a prayer.

In the result, we hold that the applicant has not been able to make out a case for any of the reliefs prayed for. The O.A. is held to be without any merit, and the same is rejected.

There shall, however, be no order as to costs.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

(SOMNATH SOM)  
VICE-CHAIRMAN

B.K.SAHOO//