

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 279 OF 2000

Cuttack this the 5th day of September/2000

Dhabaleswar Dehuri

...

Applicant(s)

-VERSUS-

Regional Provident Fund
Commissioner & another

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 47.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

S. N. Simha
(SOMNATH SOM
VICE-CHAIRMAN)

9. 9. 2000
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.279 OF 2000
Cuttack this the 5th day of September/2000

CORAM:

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

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Sri Dhabaleswar Dehuri,
aged about 58 years,
Son of Late Panchu Dehuri,
presently working as Assistant
Provident Fund Commissioner,
Resident of Qrs.No.AL63, V.S.S.Nagar,
Bhubaneswar, Dist - Khurda

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Applicant

By the Advocates

M/s.K.C.Kanungo
R.N.Singh

-VERSUS-

1. Central Provident Fund Commissioner
Employees Provident Fund Organisation
(E.P.F.) Bhavishyanidhi Bhawan,
14 - Bhikaji Kama Place
New Delhi - 110 066
2. Regional Provident Fund Commissioner
Orissa, Bhavishyanidhi Bhawan,
Unit - IX, Janpath
Bhubaneswar - 751 022

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Respondents

By the Advocates

Mr.Ashok Mohanty

...

ORDER

MR .G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, an Assistant Provident Fund Commissioner, stationed at Bhubaneswar, challenges order dated 30.4.2999 of Respondent No.1 under Annexure-1, transferring him from Bhubaneswar to Visakhapatnam. His representation for cancellation of the order of transfer was rejected on 16.6.2000 by the order of Respondent No.1 under Annexure-4. On 20.6.2000, this Bench directed the Respondents not to relieve the applicant from Bhubaneswar until further orders. This order of stay is still continuing.

2. Grounds urged by the applicant for quashing the orders of transfer are that as per transfer policy guidelines of Group A Officers issued by the Department on 4.4.2000 (Annexure-2), which according to learned counsel for the applicant Shri K.C. Kanungo has statutory force, an officer having less than three years of further service to attain the age of superannuation should not be transferred. So also an officer, whose wife/husband is serving in the same station should not also be transferred. Further officers due for transfer from the station after completion of prescribed tenure will be allowed to indicate three stations of their choice in order of preference; and postings (subject to availability of posts) should be made within one of these three choices. According to Shri Kanungo, the date of superannuation of the applicant being 31.1.2003, he was not liable to be transferred, vide order dated 30.4.2000. Further, his wife is also serving at Bhubaneswar as U.D.C. in the same office. This apart, after issuance of this guideline under Annexure-2, the applicant was not given any chance to have his choice of place of posting in case of transfer. Another plea

taken by Shri Kanungo is that since the transfer order has been issued in deviation of the guidelines indicated under Annexure-2, as per Clause - 8 of these guidelines, the same should have been issued after obtaining approval of the Executive Committee.

3. The Department filed their counter vehemently opposing the prayer of the applicant. According to Department, transfer has been made in public interest, inasmuch as the applicant completed more than ~~three~~ ^{five} years of tenure at Bhubaneswar, though the normal tenure is three years. In fact as per the old transfer policy guidelines he was asked to give choice of three stations. The applicant indicated - Rourkela, Berhampur and Visakhapatnam to be stations of his choice. Hence his posting to Visakhapatnam was as per his choice and Visakhapatnam is not far away from Bhubaneswar. As the applicant and his wife are serving at Bhubaneswar for quite long number of years, it would not be possible to keep both of them together through out their service and the shifting had to be done to the nearest possible place.

4. Rejoinder filed by the applicant is more or less in a argumentative manner.

5. Heard Shri K.C.Kanungo, learned counsel for the applicant and Shri Ashok Mohanty, learned Special Counsel appearing for the Department. Also perused the records.

6. Facts being not in dispute it is to be considered whether the order of transfer needs to be interferred as per the legal position enunciated by the Apex Court from time to time. Though there are catena of Apex Court decisions, it will be sufficient to cite ^{following} three decisions.

In Shilpi Bose case reported in AIR 1991 SC 532,

the Apex Court held that the Courts should not interfere with the transfer orders which are made in public interest and for administrative reasons, unless the transfer orders were made in violation of any mandatory statutory rules or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from place to the other. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere.

In *Union of India vs. S.L.Abas* reported in AIR 1993 SC 2448, the Apex Court observed that Administrative Tribunal is not an appellate authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. While ordering transfer of a Government servant, there is no doubt transferring authority will keep in mind the guidelines issued by the Government on the subject, but the said guidelines do not confer upon the Government employee a legally enforceable right. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it.

The observations in *S.L.Abas* case were reiterated in the case of *State of Madhya Pradesh vs. S.S.Kourav* reported in AIR 1995 SC 1056. The Supreme Court specifically observed that wheels of administration should be allowed to run smoothly and the Courts/Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to

take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous considerations without any factual background or foundation. When an order of transfer is issued on administrative grounds, the Court cannot go into the expediency of posting an officer at a particular place.

7. ^{Applicant} There is no averment that the order of transfer is tainted with malice. All that Shri Kanungo, the learned counsel attempted to impress us that order of transfer of the applicant is contrary to the guidelines issued under Annexure-2 and these guidelines have statutory force. According to him, the guidelines were framed pursuant to the provisions of E.P.F. Act and Rules and as such they have legal force of law. But on a careful perusal of Annexure-2, the guidelines dated 4.4.2000, we do not come across a single sentence that these guidelines have been framed in exercise of a particular provision of the E.P.F. Act or Rules. On the other hand Para-4 of the guidelines indicates that these have been framed on the findings of the report of Shri A.N.Ray Committee in the context of direction of Hon'ble Labour Minister and Chairman, C.B.T. (E.P.F.). We are, therefore, not inclined to accept the contention of Shri Kanungo that these guidelines have statutory force and transfer order issued contrary to the guidelines will be ipso facto void.

We also do not agree with Shri Kanungo that the order of transfer being in variance with the guidelines needs prior approval of the Executive Committee. Para-4(8) of the guidelines lays down that all transfers and postings made in variance with the above guidelines will be reported to the Executive Committee. Therefore, there is no question of prior

approval of the Executive Committee under such circumstance. There is no mention in the Application under Section 19 that such a report was submitted to the Executive Committee after the relevant transfer order of the applicant under Annexure-1 was issued. However, in the rejoinder, for the first time this fact was introduced. Since altogether a new fact was introduced in the rejoinder for which Respondents (Department) has no scope to counter, the same is ignored.

8. There is no dispute that the applicant is serving at Bhubaneswar as Assistant Provident Fund Commissioner from 3.1.1995 onwards. In other words, by the date of issuance of transfer order under Annexure-1 he had already completed more than five years of stay at Bhubaneswar, though the tenure period is three years. It is true that he would superannuate on 31.1.2000. It is also true that his wife is serving as U.D.C. in the same office at Bhubaneswar. But when the transfer has been made in public interest, the same cannot be quashed by Court of Law, even if it is contrary to the transfer guidelines issued by the Department, as has been held by the Apex Court in three decisions referred above. It is not as though under Annexure-1, applicant alone has been transferred. This Annexure-1 consists of transfer orders of several officers all over India from one place to other. We can take judicial notice that Visakhapatnam is not far away from Bhubaneswar and is easily accessible from Bhubaneswar through rail root or road. It may be that after the issuance of new guidelines under Annexure-2, the applicant was not asked for place of his choice of transfer. But the fact remains under old transfer policy guidelines, which has been superseded by the existing guidelines under Annexure-2,

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the applicant was asked to indicate his places of choice in case of transfer and while exercising his option, he indicated three stations, out of which Visakhapatnam is one. Thus there is no change in the policy in asking for exercising option for three places of choice in case of transfer. The formality having been already complied with the preceding guidelines, there was no further necessity for the Department to again ask the individual officers to exercise their option after publication of this guideline dated 4.4.2000 and before issuance of transfer orders under Annexure-1 dated 30.4.2000.

9. In view of our discussion above, we cannot interfere with the order of transfer of the applicant from Bhubaneswar to Visakhapatnam under Annexure-1. Accordingly we dismiss the Original Application due to lack of merit. No order as to costs.

10. Before parting we make it clear that our order of dismissal of the O.A. will not be a legal/administrative bar on the Department to consider representation, if any, received from the applicant after his joining at Visakhapatnam for his retransfer to Bhubaneswar or any other place(s) of his choice and under such eventuality, his representation can be considered by the Department. We make this observation because Shri K.C.Kanungo, the learned counsel for the applicant submitted before us that there are still vacancies in the cadre of the applicant at Bhubaneswar and/or nearby places.

11. *Entire order stands rejected.*

SONNATH Sahoo
(SONNATH Sahoo)
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VICE-CHAIRMAN
S. C. C.

B.K.Sahoo//

5-9-2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)