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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACKBENCH, CUTTACK.

ORIGINAL APPLICATION NO. 280 OF 2000

Cuttack, this the 13th day of July, 2000

Jaswindar Singh 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*

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
13/7/2000

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

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Jaswindar Singh, aged about 37 years, son of Sri Hazara Singh, at present working as Superintendent of Police, Baragarh, At/PO/Dist. Baragarh, Orissa...Applicant

Advocates for applicant - M/s GAR Dora
J.K.Lenka
S.P.Mishra

Vrs.

1. Union of India, represented through Secretary Ministry of Home Affairs, Government of India, New Delhi.
2. Principal Secretary to Government of Orissa, Home Department, At/PO-Bhubaneswar, Dist.Khurda.
3. Director General of Police, Orissa, At/PO/Dist.Cuttac

...Respondents

Advocates for respondents-Mr.K.C.Mohanty
Govt.Advocate
for
R 2 and 3.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner who is a direct recruit IPS officer of 1990 batch has prayed for setting aside order issued in notification No.37680 dated 9.6.2000 (Annexure-A/10) transferring him from the post of Superintendent of Police, Bargarh to the post of Commandant, OSAP, 5th Battalion, Baripada. The State Government have filed counter opposing the prayer of the applicant. For the purpose of considering the petition it is not necessary to go into too many facts of this case. The averments made by the parties in their pleadings will be referred to while considering the submissions made by the learned counsel of both sides.

of
J.Som.

2. We have heard Shri G.A.R.Dora, the learned counsel for the petitioner and Shri K.C.Mohanty, the learned Government Advocate for opposite party nos. 2 and 3. We have also perused the records. The learned counsel for both sides have referred to the following decisions which have also been taken note of.

- (i) B.Varadha Rao v. State of Karnataka and others, AIR 1986 SC 1955;
- (ii) Gujarat Electricity Board and another v. Atmaram Sungomal Poshani, AIR 1989 SC 1433;
- (iii) Union of India and another v. N.P.Thomas, AIR 1993 SC 1605;
- (iv) Union of India and others v. S.L.Abbas;
- (v) State of Punjab and others v. Joginder Singh Dhatt, AIR 1993 SC 2486; and
- (vi) Vineet Narain and others v. Union of India and another, AIR 1998 SC 889.

3. The petitioner has urged two grounds in support of his prayer. He has pointed out that ever since his joining as S.D.P.O., Deogarh after completion of training in November 1993, he has never completed one year in any station except on one occasion when after completion of just thirteen months as Superintendent of Police, Rayagada he was transferred and posted as Commandant, OSAP, 4th Battalion, Rourkela. He has served as Superintendent of Police, Bargarh from January 2000, i.e., for about five months when the present transfer order has come. Before that for about four months he was Superintendent of Police, C.I.D., Crime\$

S. D. M.

Branch, Cuttack and prior to that he was on Central Deputation. Before that he had put in four months as Superintendent of Police, Parlahemundi and ten months as Superintendent of Police, Rourkela. He has stated that by such frequent transfers he has been harassed and such transfer is against the law as laid down by the Hon'ble Supreme Court in the decisions cited by his counsel. The second ground is that his children have already taken admission in the schools at *Bargarh* *J.J.M.* The respondents have taken the stand that the petitioner had not objected to the earlier transfers even though these transfers were made at short intervals. They have stated that the present transfer has been made in exigency of public service. It is also stated that his successor at Bargarh Shri B.B.Nayak has already taken over charge and the transfer order has already been given effect to.

J.J.M. 3. We have considered the above submissions of the learned counsel of both sides. It is no doubt true that according to the law as laid down by the Hon'ble Supreme Court in different decisions the scope of interference by the Tribunal in case of transfer is somewhat limited. Transfer can be interfered with only if the order of transfer is issued mala fide or is in violation of statutory rule. It is submitted by the learned Government Advocate for respondent nos. 2 and 3 that the Tribunal cannot interfere in a transfer merely on the ground that the officer transferred has joined recently in the post from which he has been transferred. Even though the above proposition is per se acceptable it

cannot be accepted that the departmental authorities have free rein to transfer an officer after every 2/3 months. The Hon'ble Supreme Court in B.Varadha Rao's case(supra) have mentioned in paragraph 5 of their judgment that if the power of transfer is abused the exercise of power is vitiated. The Hon'ble Supreme Court in the above judgment have quoted from their observations in the case of E.P.Royappa v. State of Tamil Nadu, AIR 1974 SC 555, that frequent transfer without sufficient reasons to justify such transfer cannot but be held as mala fide. In Vineet Narain's case (supra) in paragraph 61 of the judgment the Hon'ble Supreme Court have observed as follows:

".....It is shocking to hear, a matter of common knowledge, that in some States the tenure of a Superintendent of Police is on an average only a few months and transfers are made for whimsical reasons. Apart from demoralising the police force, it has also the adverse effect of politicizing the personnel. It is, therefore, essential that prompt measures are taken by the Central Government within the ambit of their constitutional powers in the federation to impress upon the State Governments that such a practice is alien to the envisaged constitutional machinery....."

In view of the above pronouncement of the Hon'ble Supreme Court we cannot but deprecate the action of the State Government in subjecting the applicant to frequent transfers as is clear from the pleadings. It is high time that the above observation of the Hon'ble Apex Court is given weightage by the State Government as in any case they should do without further extortion from this Tribunal. Coming to the prayer of the applicant we find

that the successor of the applicant Shri B.B.Nayak has already joined as Superintendent of Police, Bargarh. It is submitted by the learned counsel for the petitioner that in accordance with Rule 772 of Orissa Police Manual, charge certificate has to be signed by both the relieving officer and the officer relieved. But in this case the successor of the applicant has unilaterally taken over charge and the applicant has not been relieved. This may not be strictly in accordance with the above rule of the Orissa Police Manual. But from notification no. 37684, dated 9.6.2000 at Annexure-A/10 of the O.A. we find that Shri B.B.Nayak is coming from the post of Additional Superintendent of Police, Cuttack, to the post of Superintendent of Police, Bargarh. He is thus coming to a higher post. Quashing of the transfer order as prayed for by the applicant would therefore have adverse consequences for his successor. The applicant, however, has not made Shri B.B.Nayak a party to this O.A. In view of this, we are not inclined to interfere in the order of transfer because this has been already given effect to.

4. In the result, therefore, the O.A. is rejected with the observation above but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
13.7.2000
VICE-CHAIRMAN