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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 315 of 2000.

Cuttack, this the 4th day of August, 2000.

PI TAMBAR SETHI.

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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*.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
7.8.2000

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

Original Application No. 315 of 2000.
Cuttack, this the 4th day of August, 2000.

CORAM:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

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PI TAMBAR SETHI,
Aged about 46 years,
Son of Sri Basudev Sethi,
of village-Puttabagada,
PS:Chhatrapur, Dist. Ganjam,
at present working as Conservator of Forests (KL),
Sambalpur Circle, Sambalpur, Dist: Sambalpur.

: APPLICANT.

By legal practitioner: Mr. H. Kanungo, Advocate.

- Versus -

1. Union of India represented through its
Secretary to Government of India,
Ministry of Forest and Environment, New Delhi.
2. Chief Secretary, Orissa,
GA Department, Bhubaneswar,
Secretariat, Orissa, BBSR.
3. Secretary to Government,
Forest and Environment Department,
Sachivalaya Marg, Bhubaneswar.
4. Sri Prasan Kumar Parida,
Conservator of Forests (KL),
Division, Bolangir, At/Po: Bolangir,
Dist: Bolangir.

: RESPONDENTS.

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By legal practitioner: Mr. B. Das, Additional Standing
Counsel (Central-For Res.No.1.

Mr. K. C. Mohanty, Government
Advocate for Respondents
2&3.

M/s. C. A. Rao, P. K. Parida,
B. N. Muduli, A. K. Beura,
for Res. No. 4.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this original Application, the applicant has prayed for quashing his order of transfer at Annexure-1. Respondents 2&3 have filed showcause and counter opposing the prayer of the applicant. Private Respondent No. 4 has also filed counter, opposing the prayer of the applicant.

2. For the purpose of considering this original Application it is not necessary to repeat the averments made by the parties in their pleadings because these will be referred to while considering the submissions made by the learned counsel for both sides.

3. We have heard Mr. H. Kanungo, learned Counsel for the Applicant, Mr. B. Dash, learned Additional Standing Counsel (Central) appearing for Respondent No. 1, Mr. K. C. Mohanty, learned Government Advocate appearing for Respondents 2 and 3 and Mr. C. A. Rao, learned counsel appearing for the Respondent No. 4 and have also perused the records.

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4. The admitted position is that in notification dated 28.6.2000, the applicant who is an officer of the Indian Forest Service of 1979 batch, has been transferred from the post of Conservator of Forests, KL, Sambalpur to Bolangir as General Manager, OFDC and Respondent No. 4 has been transferred from the post of Conservator of Forests, KL Bolangir to the post held by the Applicant. Shri Dinesh Singh, IFS, Regional Joint Director, Social Forestry Project, Sambalpur has been posted as Conservator of Forests, KL, Bolangir Circle, in place of the Private Respondent No. 4. The applicant has stated that he has been working at Sambalpur as Conservator of

Forests, KL for about 2 and $\frac{1}{2}$ years. State Government have pointed out that he has joined as Conservator of Forests, KL, Sambalpur on 29.10.1997 and this fact has not been controverted by the applicant. From this it is clear that at the time of his transfer in notification dated 28.6.2000, applicant had completed 2 years and 8 months at Sambalpur. Learned Counsel for the Applicant has submitted that by this transfer, the education of the applicant's son and treatment of his wife would be adversely affected. He has also submitted that by this transfer order he had been deputed to OFDC as General Manager. He had earlier worked in OFDC for a number of years and therefore, he should not have been deputed to OFDC again. He has also further submitted that against the order of transfer he has filed representation but no orders have been passed on his representation.

In course of hearing, learned counsel for the Applicant has fairly conceded that in case of transfers, the Tribunal can only interfere, if the transfer is issued with mala fide or in violation of statutory rules. It was submitted by the learned Counsel for the petitioner that in this case there has not been any violation of statutory rule but he prayed for quashing the order of transfer on the ground of mala fide. It has been submitted by learned counsel for the petitioner that in the original order of transfer, it was not mentioned as to who would, in between the petitioner and the OP No. 4, move first but the Chief Conservator of Forests, KL had directed the Respondent No. 4 to move first. It is also submitted by learned counsel for the Res. No. 4 as also learned Government Advocate appearing for the Res. Nos. 2 and 3 that Respondent No. 4 has already joined in the post held by the applicant at Sambalpur on 6.7.2000 and has

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sent his ~~xxxxxxxxxx~~ joining report to all concerned including ^{1/1/1} Secretary to Government, Forest Department. Notwithstanding this the Additional Secretary, Forest in his letter dated 11-7-2000 has directed the applicant to get relieved positively on or before 15.7.2000. In view of this, it is submitted by learned Counsel for the petitioner that the assertion of unilateral assumption of office by Res.No.4 should be disbelieved. It is also submitted that the Principal/Conservator of Forests, KL has no authority to direct Respondent No.4 to move first and this itself shows mala fide. Law is well settled that for pleading mala fide the person against whom mala fide is urged has to be impleaded by name so that he has a chance to have his say with regard to the allegation. But in this case, the PCCF, KL has not been impleaded by name. It is also to be noted that the allegation of mala fide with regard to the action of the PCCF, KL, is in the matter of relief of the applicant and this is subsequent to the order of transfer issued on 28.6.2000. In view of this, it can not be said that the transfer order has been issued with mala fide. All the submissions made by learned counsel for the petitioner alleging mala fide is with regard to the relief of the applicant and unilateral joining of Res.No.4 and is not about issuance of the order of transfer dated 28.6.2000. In view of this, the allegation of mala fide is held to be without any merit and is rejected.

5. It is also to be noted that as the PCCF, KL has not been impleaded as a party by name, allegation of mala fide can not also be taken note of.

6. As regards the other submissions of the learned counsel for the petitioner it is to be noted that the admitted position is that the applicant is in a transferable job

and instead of being transferred after completion of the usual tenure of three years at his present station, he has been transferred after completion of two years and eight months. This would not make the transfer order illegal and liable to be quashed.

7. As regards the personal difficulties of the applicant, it is to be noted that he is going from one District headquarters to another District headquarters and facilities of medical treatment and education are there in Bolangir where many other All India services Officers have served in the past and are also presently serving. In view of the above, we hold that this submission of the applicant is without any merit.

8. In the result, with the discussions made above, we find no merit in this Original Application which is accordingly rejected but in the circumstances, without any order as to costs.

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

KNM/CM.