

NOTES OF THE REGISTRY

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11. ORDER DATED 5-11-2001.

Learned Lawyers for both sides have abstained from Court work protesting against the law and order incident at Puri involving lawyers and advocates. The CAT Bar Association have intimated in their resolution dated 5.11.2001 that according to the Resolution passed by the Orissa High Court Bar Association, they have ceased their Court work till 10.11.2001. Hon'ble Supreme Court in the case of RAMAN SERVICES PRIVATE LIMITED VRS. SUBASH KAPOOR reported in JT 2000 (suppl. 2) SC 546 have deprecated the practice of Courts adjourning cases on the ground of strike of the Ld. counsel. In the last sentence of the judgment, the Hon'ble SC have observed as follows:

The defaulting courts may also be contributory to the contempt of this Court.

In otherwords, a court granting adjournment of a matter which is ready for hearing on the ground of strike of lawyers will be contributing to the contempt of the Hon'ble SC. In view of this, the matter can not be adjourned indefinitely. The Petitioner is absent on call. I have, therefore, perused the pleadings of the parties.

11/10/01

In this OA, the applicant, is an IFS officer of Orissa Cadre with 1989 as his year of allotment. In this Original application he has prayed for quashing the order dated 29.3.2000 (Annexure-2) transferring him from the post of DFO (T) Jeypore Division to the post of Deputy Director, Social Forestry

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Project, Sundergarh in place of one Shri S.K. Acharya who has been posted in his place at Jeypore(T) Division in the next notification. In the notification relating to applicant, it has been mentioned that he has been transferred from Jeypore to Sundergarh on administrative grounds. The applicant has challenged this transfer order on various grounds mentioned in his original Application. State of Orissa (Res. No. 1) have filed counter opposing the prayer of applicant. No rejoinder has been filed.

For the purpose of considering this petition it is not necessary to go into too many facts of this case. The ground on which the applicant has challenged his transfer and the reply thereto by Res. No. 1 are considered below.

Applicant has stated that he joined the post of DFO(T), Jeypore on 3.1.2000 and within seven months he has been transferred. He has also stated that such transfer in the midst of the academic session will affect the education of his child as it would be difficult for him to secure admission for his child at Sundergarh. He has also stated that while working as DFO(T), Jeypore Division he was pressurised by the then Conservator of Forests, Koraput to issue TT permits in respect of all felled materials involved in recorded holding ~~lands~~. As the applicant found lot of irregularities in this, he did not agree to carry out the illegal instruction of the then Conservator of Forests, Koraput. It is further stated that applicant had raided

Jm.

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three Saw Mills of Jeypore Town but he could not take further action because the Conservator of Forests, Koraput intervened and instructed him to allow the Saw Mills to run even though the saw Mills are running for previous five years without any licence. Applicant reported all these matters (confidentially) to the Commr. cum Secretary, Forest and Environment Department in his letter dated 27.6.2000 but without taking any action on his report in the impugned order, applicant has been transferred on mala fide grounds.

Law is well settled that when mala fide is urged, the person against whom allegation of mala fide is made has to be impleaded by name so that he is in a position to appear and state his version. In the instant case, applicant has made specific allegations against the Conservator of Forests, Koraput but he has not made him as a party by name. In view of this, his allegation of bias against the Conservator of Forests, Koraput can not be considered. It is also to be noted that transfer order has been issued by the Forest Deptt. Respondent No.1 and the applicant has made no allegation of mala fide against the transferring authority. In view of this the contention of applicant that the impugned order of transfer has been issued with mala fide intention is held to be without any merit and is rejected.

JWM

Respondent No.1 in his counter has stated that during the incumbency of the petitioner as DFO(I), Jeypore, incidents of large

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scale illicit felling of green trees came to the notice and on receipt of report of Conservator of forests, as well as the report dated 27.6.2000 of the applicant referred to earlier, a committee was formed to look into the matter. It is stated that from the report of the Committee it was noticed that the applicant as D.F.O(T) and his subordinate staff have committed many irregularities in the matter of illicit felling of green trees and transportation of such timber. That is why, the applicant was transferred from the post of DFO(T), Jeypore on administrative grounds as mentioned in the order of transfer. From the above, it is noticed that the Departmental Authorities have noticed prima facie lapse in the work of applicant as DFO(T) Jeypore and that is why he has been transferred. It is not open for the Tribunal to go into that aspect whether the lapses have been correctly found in the work of the applicant by the Departmental Authorities. There is no rule that the DFO can not be transferred even before completion of one year. As the Departmental Authorities have enquired into the certain allegations of commission of illegalities/ irregularities by the applicant and his subordinate staff, the Departmental Authorities are within their rights to transfer the applicant. No illegality can therefore be found in the impugned order of transfer. ~~xxxxxxxxxx~~ *Jdm*

Respondent No.1 has also mentioned that in the meantime the applicant has already handed over the charge of the post of DFO(T), Jeypore.

Jdm

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Free copies of final order dt. 5.11.2001 issued to counsel for both sides.

12/8/10
S. O. (1)

There is no mention in the counter if the applicant has in the meantime joined his new post at Sundergarh but as the applicant has handed over the charge of his post of DFO(T) Jeypore and his successor has already joined and as it is held that the transfer order is not liable to be quashed, the OA is held to be without any merit and the same is rejected.

No costs.

SOMNATH SAM
VICE-CHALRMAN
5/11/2001

KNM/CM.