

ORIGINAL APPLICATION NOS. 462, 463 & 464/2000

Respondents

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(D.V.R.S.G.DATTATREYULU)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NOS.462,463 & 464/2000
Cuttack this the 20th day of Dec./2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI D.V.R.S.G.DATTATREYULU, MEMBER (JUDICIAL)

...

IN O.A.462/2000

Sri Abdul Satar Khan, aged about 52 years,
S/o. Late J.Khan, at present working as Sr.Auditor
O/O. Accountant General (Audit)-II, Bhubaneswar-751001

IN O.A.463/2000

Sri Samir Kumar ^{Sarkar} aged about 46 years,
Son of Late L.N.Sarkar, at present working as
Sr.Auditor, O/O Accountant General (Audit)-II,
Bhubaneswar-751001

IN O.A.464/2000

Sri Pradipta Kumar Das, aged about 40 years,
Son of Late Ramakanta Das, at present working
as Sr.Auditor, O/O. Accountant General (Audit)-II
Bhubaneswar-751001

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Applicants

By the Advocates

M/s.P.V.Ramdas

P.V.Balakrishna

-VERSUS-

1. Union of India represented by the Accountant General (Audit)-I, Orissa, Bhubaneswar-751001, Khurda
2. Accountant General (Audit)-I, Orissa, Bhubaneswar 751001, District - Khurda
3. Accountant General (Audit)-II, Orissa, Bhubaneswar 751001, District: Khurda
4. Deputy Accountant General (Admn), C/o. Accountant General (Audit)-I, Orissa, Bhubaneswar-751001, Dist - Khurda
5. Sr.Audit Officer (Admn-I), Office of the Accountant General (Audit)-I, Orissa, Bhubaneswar-751001, Dist - Khurda

Respondents

(in all the O.A.s)

By the Advocates

Mr.A.K.Bose,

Sr.Standing

Counsel (Central)

MR.D.V.R.S.G.DATTATREYULU, MEMBER (JUDICIAL) : These three applicants in the present Applications have approached the Tribunal praying to quash the transfer orders ~~these are~~ passed under Annexure-6 dated 26.9.2000.

2. Since all the applicants are working in the A.G.Office at Bhubaneswar and the point raised by them is one and the same in all these petitions, the Tribunal considered it necessary as well as desirable to dispose of the said matter by a common order.

3. The facts giving rise to filing of the present Original Applications are to the effect that the applicants are working as Senior Auditors in the Office^{of} the Accountant General, Audit-I, Bhubaneswar. According to them an incident had happened and the applicants were issued with the Memos under Annexure-A/1 dated 2.8.2000 asking them to show cause as to why disciplinary action should not be taken against them and the applicants offered their show cause to the said memos vide letters dated 4.8.2000 under Annexure-A/2. After considering the same the Deputy Accountant General (Admn)vide order dated 14.9.2000 warned the applicants instead of taking any further disciplinary action and construing the same as misconduct. It is the case of the applicants that Respondents 1 and 2 are biased against them and malafide transfer is effected.

4. Respondents filed their counter denying various allegations made in the Original Applications parawise and it is stated that explanations given by the applicants were ^{not} considered and it was~~was~~ found to be correct. Therefore, the applicants were issued with warnings as the departmental authorities took a lenient view that no formal penalty under the C.C.S.(Conduct) Rules had been imposed.

It is also stated in Paragraph-6 of the reply that general transfer orders have been issued in respect of 63 officials including the applicants, who are posted to different Resident Audit Offices manned from the strength of the Accountant General (Audit) and it has nothing to do with any of the disciplinary proceedings sought to be initiated against the applicants, and with reference to various decisions and judgments, as cited by the applicants, respondents in their counter have stated that transfer is an administrative decision to be made by the administration and there cannot be any judicial interference with the same. The applicants have filed rejoinder stating that the averments made in the reply are not correct and it is the stand of the applicants that the senior officers ^{are} biased against them on account of earlier proceedings and that is the reason why the transfer has been effected. It is also the stand of the applicants that transfer during mid academic session will affect the education of their children and, therefore, transfer orders should be quashed.

5. Since the Lawyers are on strike and since the applicants prayed that these Original Applications involving transfers should be disposed off expeditiously, we heard the applicants in respective Original Application and also ^{Confidential} ~~taken note of~~ the reply, rejoinder and various documents filed by the parties.

6. The only point for determination in these three Applications is whether the transfer orders passed by the respondents are to ^{be} ~~quashed~~ or not.

7. It has to be seen that once an employee joins the service, transfer is an incident of service. Transfer is a part of an officer ^{or employee} in the service career and the established

law is that transfer cannot be questioned unless the same is intended to act as a punishment or is done with malafide or on extraneous consideration affecting the conditions of service of any particular employee. Keeping the above provision of law in view, it is to be seen whether in the instant case before us, the applications would disclose any of the application of the fact as alleged therein. Though the applicants in their O.A.s have stated that transfers have been effected malafide, respondents have stated that the transfers have been effected in respect of 63 officials including the present applicants. Applicants have stated that transfers in respect of other employees than five persons have been made in the same station under Annexure-A/6. Before coming to the conclusion, the question here is whether there is any bias or malafide. It is to be seen that the applicants, viz. M/s.A.S.Khan, S.K.Sarkar and P.K.Das have been working at Bhubaneswar from 1969, 1989 and 1987 respectively. Therefore, this is a fit case where the applicants ~~without any disturbance whatsoever~~ have been transferred from the Headquarters. It is the case of the applicants that while other employees were posted in the same station they were not. It may be a fact, but it does not mean that only the applicants were disturbed and others were not. On an enquiry that has been made by this Tribunal it is seen that applicant in O.A.462/2000 is transferred to Paradeep, which is about 120 kms. away from Bhubaneswar, applicant in O.A.463/2000 to R.A.O., Samal which is 50 kms. away from Bhubaneswar and applicant in O.A.464/2000 to Dhenkanal, which is 80 kms. away from Bhubaneswar. So practically within 120 kms. radius transfers have been effected. It is to be seen

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that opportunity to work at a particular place must be given ^{to all} by the employees and it is ^{not} a vested right of the employer to deny that particular place of posting, ^{to whom} and it is left to the authority concerned to consider which employee should be posted where without disturbing the efficiency that is expected to be in service. Therefore, the present transfers of the applicants do not show that transfer is effected in a way to act vindictively.

Coming to the question ^{of} malafide, we do not see any materials on record that the respondents are biased against the applicants and we also see that the applicants are not to put to sufferance by such transfers, only there may be an estrangement between the employee and employer and it does not come within the legal ambit of malafide; and the persons, against whom bias or malafide has been alleged are required to be made parties by their names. In fact respondents have taken the stand that transfers have been effected in public interest. It is the subjective satisfaction of the concerned authority to take a decision with regard to transfer keeping in view the public interest. If the concerned authority comes to the conclusion that an employee should not be remained there in order to maintain discipline and decorum which are part and parcel of the service jurisprudence has to be disturbed therefrom, which comes within the meaning public interest. <sup>It is the question of Academic year down-
wise.</sup> Judiciary cannot ^X intervene with the subjective satisfaction of the authority, who has taken a decision on the subjective assessment of the concerned employee. It is not open for the Tribunal to monitor day to day work of the Department. The authority in

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the Department is the best judge to decide who should be posted where. The submissions of the applicants that disciplinary proceedings were sought to be initiated against them, but those were not done and they were only given a warning and thereafter transfers have been effected malafide. This submissions of the applicants are wholly misconceived, because, besides the applicants in the instant O.A.s other employees have also been transferred. Therefore, on consideration of the entire material the Tribunal considered that these are not fit cases where judicial intervention on the action of the administration transferring the applicants is warranted. Therefore, we find no merit in all these three applications which are dismissed, leaving the parties to bear their own costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

N.A. Som 28/12/2000
(D.V.R.S.G.DATTATREYULU)
MEMBER (JUDICIAL)

B.K.SAHOO//