

Order dated 27.10.2000

In this Application filed on 23.10.2000 praying for quashing the order dated 28.6.2000 (Annexure-2) of the State Government transferring the applicant, an officer of the I.F.S. cadre from Sambalpur to Bolangir and for quashing the letter dated 28.8.2000 (Annexure-4) of the Government intimating the applicant about rejection of his representation dated 1.7.2000 for cancellation of this transfer, the applicant earlier approached this Tribunal in Original Application No.315/2000 praying for quashing the very same transfer order dated 28.6.2000. On context, through an elaborate order dated 4.8.2000 this Division Bench dismissed that Original Application. This dismissal order has been challenged by the applicant before the High Court of Orissa in O.J.C. No.7573/2000. By order dated 17.8.2000, after hearing some arguments of the learned counsel for the petitioner, the O.J.C. was permitted to be withdrawn as the petitioner intended to move the departmental authorities for redressal of his grievances. Thereafter, he preferred O.J.C. No.9354/2000 before the High Court of Orissa challenging the rejection of his representation communicated to him vide order dated 28.8.2000 (Annexure-4). By order dated 20.10.2000 O.J.C. was disposed of with an observation that it was open for the petitioner to move this Tribunal, if he felt aggrieved by this order of rejection of his representation. Thereafter this Original Application has been filed by the applicant.

We have heard Shri S.Mallick, the learned counsel for the applicant, Shri K.C.Mohanty, the learned Government Advocate appearing for the State of Orissa and Shri A.K.Bose, the learned Senior Standing Counsel appearing for the Union of India on the question of maintainability of this Original Application. Also perused this Application as well as disposed of O.A. 315/2000.

As stated above, two prayers have been made in this Original Application; viz., one is for quashing the order of transfer dated 28.6.2000 and the other is for quashing the letter dated 1.7.2000 communicated to him rejecting his

representation for cancellation of transfer. These prayers are not maintainable on the grounds discussed hereunder:

The first prayer concerning quashing of the transfer order dated 28.6.2000 was already the subject matter of O.A.315/2000, which was filed for quashing the very same transfer order. On contest, through an elaborate order dated 4.8.2000 that O.A. was dismissed by this Bench. Our dismissal order was challenged before the High Court of Orissa by the applicant in O.J.C. 7573/2000, which was ultimately permitted to be withdrawn by him even after submissions of arguments before that Court. It comes to this that our order of dismissal not being interfered or set aside by the High Court has become final. In the subsequent O.J.C. 9354/2000 filed before the High Court by the applicant, as the order disposing of that O.J.C. reveals, he did not pray for quashing the transfer order and/or our dismissal order passed in O.A. 315/2000. Since our order in O.A.315/2000 disallowing the prayer of the applicant for quashing the order of transfer has become final the very same prayer for quashing the same transfer order in this O.A. is not maintainable. The applicant has undoubtedly abused the process of this Court by seeking this prayer in the instant case. We hope he will not venture in future to approach us with another Original Application incorporating the very same prayer.

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Vide order dated 20.10.2000/disposing of the O.J.C. 9354/2000, the High Court of Orissa had not directed this Tribunal to admit any application moved before this Tribunal with a prayer for quashing the order of rejection ~~vide~~ (Annexure-4) of ~~his~~ representation, made by the applicant. Hence we have discretion to examine as to whether even this prayer in this Original Application is maintainable or not. The relevant facts with reference to this prayer are that on 1.7.2000 applicant submitted representation (Annexure-5) addressed to the Chief Minister of this State through proper channel requesting cancellation of the transfer order dated 28.6.2000.

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Order rejecting his representation was communicated to the applicant by the Department of Forests and Environment, Government of Orissa in letter dated 28.8.2000 (Annexure-4). According to applicant, as this letter intimating rejection of his representation does not contain any reason, the same has to be quashed. The question for consideration is whether the applicant has any statutory right to address a representation of this nature ~~of~~ to the Chief Minister of the State seeking cancellation of the order of transfer, without at first submitting any representation to the Government, i.e., either to the Secretary or the other competent authority of the Department of Forests & Environment. No provision of law or any rule has been cited before us by the applicant that he has got such a statutory right to address a representation of this nature to the Chief Minister or even to the Minister of the Department concerned. When the applicant has no such statutory right, even if order rejecting his representation does not contain any reason, the applicant ^{cannot} ~~could~~ not have any cause of action under law to challenge the same, because, the Chief Minister is not ~~a~~ duty bound to assign any reason while rejecting his representation, if indeed no reason has been assigned.

We, therefore, feel that even this prayer is not entertainable.

In the result, this Original Application being not maintainable is dismissed without being admitted.

Hand over copies of orders to the parties.

Somnath Som
VICE-CHAIRMAN
27.10.2000

27.10.2000
MEMBER (JUDICIAL)

SOMNATH SOM, VICE-CHAIRMAN

I entirely agree with the reasoning and conclusion of my learned brother in the order just delivered by him which has also been authenticated by me. On one point I would like to make some further remarks. Along with this OA the petitioner has enclosed at Annexure-3 a letter purportedly addressed to

the Chief Minister, Orissa, marked confidential and personal, which is stated to have been signed by all Divisional Forest Officers of Forest Department, Government of Orissa. From the xerox copy it appears that only one signature is there. This annexure unlike the other annexures enclosed to the OA has not been attested as true copy in the "A" file of our record. But in the "B" file we find that this Annexure has been attested as true copy by the learned counsel for the petitioner. We also find that this purported letter dated 1.9.2000 addressed to the Chief Minister of Orissa by name is couched in abusive and offensive language and as this annexure in "A" file of our record is not attested, in our order dated 24.10.2000 we had indicated that while considering the question of admission of the OA, we will not consider Annexure-3 to the OA. In view of this, we have not considered Annexure-3 while passing the above order. But it is necessary to note that the applicant, who is a very senior officer of State Government belonging to an All India Service, should not have enclosed a document which is not attested by him to be true copy and which by its very nature could not have been attested to be true copy by him with reference to the original because the original is purportedly addressed to Chief Minister, Orissa, by name. I deprecate such conduct on the part of the petitioner. I also direct that extract of our order should be sent to the Secretary to Government of Orissa, Forest & Environment Department for his information. In the order just delivered by us we have

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rejected the O.A at the stage of admission and because of this notices have not been issued to the respondents including respondent no.3, Secretary to Government of Orissa, Forest & Environment Department. In view of this, it is directed that a copy of the OA along with enclosures should be sent along with the order to respondent no.3 for his information.

Somnath Som
(SOMNATH SOM)
27.10.2000
VICE-CHAIRMAN

Copies of order
Dt 27/10/2000 issued
to counsel for both
sides.

[Signature]

27.10.2000
S.O.

27/10/00

copy of
order dt. 27.10.2000
with OA. copy
sent to R-3
by post.

Rakhi
30/10.

[Signature]
24/10
S.O.