

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 586 OF 2000.
Cuttack, this the 1st day of January, 2001.

RAJENDRA KUMAR BAJPAI.

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APPLICANT.

VRS.

UNION OF INDIA & OTHERS.

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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
1/1/2001

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ORIGINAL APPLICATION NO. 586 OF 2000.
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C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

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SHRI RAJENDRA KUMAR BAJPAI,
Aged about 46 years,
S/o. Late Chhotelal Bajpai,
now working as Assistant Engineer, (Civil),
Civil Construction wing, All India Radio,
C U T T A C K.

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APPLICANT.

By legal practitioner: Mr. G. N. Padhi, Advocate.

- Versus -

1. Union of India represented through
Secretary, Information and Broadcasting,
Corporation India, At-New Delhi.
2. Director General,
All India Radio (Civil Construction)
At/Po: Akashvani Bhawan, New Delhi-110 001.
3. The Superintending Engineer (Civil),
CCW All India Radio T. V. Towers,
Golf Green, Calcutta-700095.
4. Executive engineer (Civil),
Construction wing,
At/ Bhubaneswar (Orissa),
Dist: Khurda.

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RESPONDENTS.

By legal practitioner: Mr. S. B. Jena,
Additional Standing Counsel.

S.B. Jena

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application under Section 19 of the Administrative Tribunals Acts, 1985 the applicant has prayed for giving a direction to the Director General, All India Radio (Civil Construction), Respondent No. 2, and Executive Engineer (Civil) Construction Wing, Bhubaneswar, Respondent No. 4 to allow the applicant to continue at Cuttack till the ^{end of the} academic session i.e. 31-3-2001. Second prayer is for staying the order dated 23-11-2000 at Annexure-8 relieving the applicant from his present post till 31-3-2001. By way of interim relief, the applicant had asked for interim protection till 31-3-2001 and had prayed for a direction to the Respondents not to take any coercive action against him.

2. On 14-12-2000, prayer for interim relief was disposed of on the submission that the applicant has already been relieved in order dated 23.11.2000 but on the submission of the applicant that he has not handed over the charge to his reliever it was ordered that he need not hand over the charge till 1.1.2001. It was also ordered that in case before this date his reliever turns up for joining, then the applicant will be obliged to handover the charge to him.

3. Respondents have filed counter in court today after serving copy on the other side and applicant has also filed a Memo copy of which has been given to Respondent No. 4.

4. We have heard Mr. Rajendra Kumar Bajpai, the applicant in person who is present in court and Mr. A.K. Gupta, Respondent No. 4 who is present in court and have also perused the records.

5. As learned counsel have stayed away the Court, we did not have the benefit of hearing the learned counsel for both sides.

6. For the purpose of considering this Original Application, it is not necessary to go into too many facts of this case. The admitted position is that the applicant is working as Assistant Engineer (Civil Construction) wing in All India Radio, Cuttack since July, 1995. In order dated 25.5.2000 at Annexure-2, he has been transferred from Cuttack to the post of ASW(C) SSW, New Delhi in place of one Shri C.S. Murigal who has been transferred to the post of the applicant in the same order. Applicant has stated that because of his family problem he had earlier represented for a posting at Bhopal, Jabalpur and Bilaspur but his case for posting in one of these places has not been considered and he has been posted to New Delhi. It is further submitted by the applicant that till 23.10.2000, he has not been relieved and his successor has not joined. He has stated that he has filed representation on 12.6.2000 for his posting at Allahabad, Bhopal, Indore and his representation was also forwarded by the Respondent No. 4 in his letter dated 16.6.2000 to the Supdt. Engineer (Civil), Calcutta. Applicant has further stated that as his representation was under consideration the order of transfer dated 25.5.2000 was not acted upon. Subsequently in order dated 30.10.2000, Res. No. 4 has relieved him and thereafter, the applicant has filed a representation for continuing in his present place of posting till 30.11.2000 on the ground that the half yearly examination of his son is going to be over by 30.11.2000. He has

stated that his wife has been suffering from acute Bronchial Asthama. Copy of the certificate given by the treating physician is filed at Annexure-6. Applicant has stated that the transfer order has come in the mid-academic session and he will be put to difficulties, if he is now relieved from his post at Cuttack and made to join at New Delhi. That is why, he has prayed in this petition for a direction to the Respondents to allow him to continue till 31.3.2001. Respondents in their counter have pointed out that the applicant was initially transferred from 25.5.2000 which was at the end of the academic session. Thereafter, on 12.6.2000 he has represented for a posting nearer to his home town that is at Jabalpur, Bhopal and Bilaspur. It was submitted by Respondent No.4 that because his representation was under consideration and no order has come on his representation the applicant was not relieved from his present assignment at Cuttack. It is further submitted by Respondent No.4 that he has received instruction from the Head Office that all persons transferred in order dated 25-5-2000 should be relieved forthwith and the applicant has been relieved on 30.10.2000. It has been mentioned by Respondent No.4 that the applicant on getting the relieve order represented to allow him to continue till 31.3.2001. He has also asked for and received the advance transfer TA and transfer grant but instead of getting himself relieved on the date, he has approached the Tribunal with a prayer for continuing till 31.3.2001. On the above grounds the Respondents have opposed the prayer of the applicant.

J. Jom.

6. Law is well settled that in the matter of transfer, the scope of interference by the Tribunal is somewhat limited. Honourable Supreme Court have already held in many cases that the transfer order can be interfered with if the orders are issued with mala fide or are issued arbitrarily or in violation of the statutory rules. In the present case, the applicant has not urged any of the grounds. So far as personal difficulties, it has also been held by the Apex Court that these are the matters which are to be primarily considered by the Departmental Authorities. In the instant case, we note that the applicant was transferred in order dated 25-5-2000 which was after the end of the academic session. He continued at Cuttack making representation on 12.6.2000 asking for a posting at Allahabad, Bhopal and Indore. Earlier, at the time of his transfer, he has given his choice at Bhopal, Jabalpur and Bilaspur. This representation is dated 12.6.2000 is an enclosure to Annexure-4 of the O.A. From this it is seen that in this representation he has not asked for his continuance at Cuttack either till 30.11.2000 or till 31.3.2001. From this it is clear that through this representation all he wanted ^{only} for change of his posting from Delhi to one of the places mentioned in his representation. When he was sought to be relieved in order dated 23.10.2000, he had asked for continuance till 30.11.2000 and after 30.11.2000 he has approached the Tribunal, with the prayers referred to earlier.

J Jm.

7. It is submitted by the petitioner that after filing the representation seeking for his continuance at Cuttack till 30.11.2000, when he approached the Principal of the school where his daughter is reading, he was advised that at this stage change of examination centre from Cuttack to Delhi is not possible. It is submitted by him that he will have to remain at Cuttack because of his daughter's Board examination and because of his wife's illness, he is unable to leave his family and go and join in his post and that is why he was forced to pray for continuance of his stay at Cuttack till 31.3.2001. We note that the applicant is working at Cuttack from July, 1995 and thus already completed his tenure at Cuttack. In his original representation dated 12.6.2000 he had not asked for continuing at Cuttack for any specific period. He had only asked for change of his posting from Delhi to the places mentioned by him in his representation within the state of Madhyapradesh. Thereafter, again on receipt of the relief order on 23.10.2000 he has asked for continuance till 30.11.2000. In view of this we are not inclined to pass any order directing his continuance at Cuttack till 31.3.2001. This prayer is accordingly held to be without any merit and is rejected.

8. We, however, note that the applicant has filed a representation on 23.11.2000 at Annexure-7 to allow him to continue at Cuttack till 31.3.2001. Unlike his earlier representation which was addressed to the Director General, this representation at Annexure-7^{is} addressed to ~~ex~~ executive Engineer who is not competent to take a decision on this point. We find that copies of this representation have also

S. Som.

been sent by the applicant to the authorities at headquarters. In view of this, we dispose of the Original Application with a direction to the Respondents 1 to 3 to dispose of this representation dated 23.11.2000 within a period of 15 days from the date of receipt of a copy of this order. We also vacate our interim order and direct that the applicant should hand over the charge of his office to the person authorised to receive the charge from him and if he is so advised he may remain on leave till the disposal of his representation as directed by us. Respondents are directed not to take any coercive action against the applicant if he remains on leave till the disposal of his representation.

9. With the above observations and directions the Original Application is disposed of. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN
2001

KNM/CM.