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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 219 OF 2001  
Cuttack this the 12th day of May 2004

Pradeep Kumar Barik ... Applicant(s)


-VERSUS-

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 75
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 75

(M.R. MOHANTY) 12/05/04  
MEMBER (JUDICIAL)

(B.N. SOM)   
VICE-CHAIRMAN

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CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)  
...

Pradeep Kumar Barik, aged about 31 years,  
S/o. late Prasana Kumar Barik, At-Banichhia,  
PO-Nangaleswar - at present working as EDMC-  
cum-EDDA, Nikhira BO, Via-Singla, Dist-Balasore

... Applicant

By the Advocates

Mr. P.K. Khuntia

-VERSUS-

1. Union of India represented through its Secretary,  
Deptt. of Posts, Dak Bhawan, Parliament Street,  
New Delhi
2. Chief Post Master General, Orissa Circle,  
Bhubaneswar-1
3. Superintendent of Post Offices, Balasore Division,  
Balasore, Orissa
4. Sub-Divisional Inspector (Postal), Jaleswar West  
Sub-Division, At/PO-Jaleswar, Dist-Balasore
5. Radha Krushna Sahu, Sub-Divisional Inspector  
(Postal), Jaleswar (West) Sub-Division, At/PO-  
Jaleswar, Dist-Balasore, Orissa
6. Laxmikant Singh, aged about 22 years, S/o.  
Madan Mohan Singh, At/PO-Nangaleswar, Dist-  
Balasore

...

Respondents

By the Advocates

Mr. A.K. Bose, S.S.C.  
M/s. B.K. Mohanty  
R. Mohanty  
P.K. Bhuyan  
S.K. Pattnaik  
Sk. Q. Ahmed  
(Res. No. 5)

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Shri Pradeep Kumar Barik,  
presently working as Extra Departmental Mail Carrier-cum-  
Delivery Agent (in short EDMC-cum-DA) Nikhira Branch  
Office has filed this Original Application assailing the  
inaction on the part of the Respondents-Department for

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not transferring him to the post of E.D.M.C., Nangaleswar S.O. He has also challenged the selection of Res.No. 6, viz., Laxmikant Singh to the post of EDMC, Nangaleswar S.O.

2. The case of the applicant is that he has been working as EDMC-cum-D.A., Nikhira Branch Office with effect from 20.11.2000 and while working as such a vacancy in the post of EDMC, Nangaleswar SO fell vacant on 31.3.2001, against which post he had applied seeking a transfer to that post. He submitted his application in this regard on 08.4.2001 before the Respondent No.5 followed by his reminder dated 28.4.2001. His grievance is that without considering his case/request for transfer in accordance with D.G.Posts circular dated 12.9.1988 (gist of which is extracted in O.A.) the Respondents-Department on the same date notified the vacancy. He has further submitted that his claim is fortified by the judgment of the Hon'ble High Court of Orissa in O.J.C.No.8355 of 1999 disposed of on 21.6.2000 wherein it has been held by the Hon'ble High Court that since he was working with the recruiting unit his application for transfer could not have been ignored.

2. The Respondents-Department, while admitting the facts of the case have submitted that the applicant has no reason for assailing the vacancy circular dated 26.4.2001 calling applications for filling up of the post of EDMC, Nangaleswar SO and sending requisition to the Employment Exchange too. They have also disclosed that the Res.No.4 did not approve the applicant's prayer for transfer in the light of the instructions as contained in D.G.Posts letter No.43-27/85/Pen.EDs & Trg. dated 12.9.1988. They

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have also stated that the Respondents issued public notification calling for applications well before the receipt of application from the applicant (Annexure-1). As the Res.No.4 had already issued public notice he had limited scope for transferring the applicant at that stage and therefore, the applicant had to compete with other candidates. It is in this background, the Respondents-Department have prayed that the application being devoid of merit is liable to be rejected.

3. We have heard the learned counsel for both the sides and perused the materials available on record.

4. The question to be answered in this O.A. is whether an E.D.Agent enjoys the right to seek transfer. The answer to this question is available in the D.G.Posts circular dated 12.9.1988 which has been relied upon by the applicant. In the circular itself it has been stated that EDAs are recruited through local area and that they are not eligible for transfer from one post to another. It is further stated in the said letter that in view of this it will not be correct to allow transfer of EDAs freely from one post to other. However, certain exceptions have been made there to allow transfer in certain cases. It has been laid down that an ED Agent can be transferred if he becomes surplus on account of abolition of the post or if a vacancy arises in the same office or in any office in the same place. Therefore, there are two situations when a transfer of an ED Agent can be considered treating that as an exceptional one when the vacancy arises in the same place or in the same office; and secondly, when an ED Agent is to be rehabilitated because of abolition of post. It is true that

by subsequent order of D.G.Posts dated 11.8.1994, the geographical area for considering transfer has been extended <sup>from</sup> the same office <sup>to</sup> in any office in the same place or recruiting unit. But it is to be kept in view that transfer is not a condition of service in so far E.D.Agents are concerned. This has been repeatedly emphasized in the D.G. Posts circular dated 12.9.1988. Our notice has been drawn to the service rules concerning Gramin Dak Sevak (at Note-II (iv) of Rule-3) wherein it has been laid down that "Sevak shall not have any transfer liability". The learned counsel for the applicant laid great stress on the decision of the Hon'ble High Court of Orissa in O.J.C.No.8355/99. However, we feel that the decision of the Hon'ble High Court in that case is of no great help to the applicant, because, the question is not whether the post of E.D.M.C., Nangaleswar S.O. and Nikhira B.O. falls within the same recruiting unit (though the answer is in the affirmative). Another distinguishable fact of this case is that no representation for transfer was pending consideration and that the applicant's representation had been disposed of before hand. So, in this O.A. the question to be answered is whether the applicant has a vested right to claim transfer. In terms of now framed G.D.S.Service Rules, which came into being from 2001, the answer is in the negative. Even in terms of the earlier instruction dated 12.9.1988 of D.G.Posts (as quoted by the applicant in his O.A.) this position was the same to the effect that the EDAs are not eligible/liable for transfer from one post to another. The D.G.Circular <sup>dt-12.9.88</sup> regarding transfer of E.D.Agent from one place to another was made only to meet the

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administrative need under certain compelling situations like redeployment of surplus candidate(s) etc. Nowhere it has been laid down in the circular that transfer of an E.D. Agent from one place to another is either a condition or incidence of service. No case has been made out by the applicant for the Tribunal to intervene in the matter and to provide him relief, because, shifting of an E.D.A./GDS is an indefeasible right of administrative policy which is outside the domain of judicial scrutiny, unless such a decision is vitiated or actuated with mala fide or arbitrariness. That not being the case here and as the Respondents have stated that the applicant's application was received after the vacancy was notified, Res. No.4 had hardly any option to take any action thereon. This being the state of affairs, we see no reason to interfere with the decision of the Respondents-Department.

5 For the reasons discussed above, the O.A. fails. No costs.

(M.R. MOHANTY) 12/05/04  
MEMBER (JUDICIAL)

BJY

(B.N. SOM)  
VICE-CHAIRMAN