

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.388 OF 2001  
Cuttack this the 19th day of December/2001

J.P. Bhagat ... Applicant(s)

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**Applicant(s)**

**-VERSUS-**

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

**Respondent(s)**

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No

(N. PRUSTY)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
19.12.2007

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO.388 OF 2001  
Cuttack this the 19th day of December/2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI N. PRUSTY, MEMBER (JUDICIAL)

...

Shri J.P.Bhagat, aged about 58 years,  
S/o. Late Ramkrusna Bhagat  
At -Markendswar Sahi, PS/Town/Dist-Puri

...

Applicant

By the Advocates

M/s.A.C.Swain  
A.K.Mohanty  
M.K.Mohanty  
B.P.Tripathy

-VERSUS-

1. Union of India represented through Director, Prasar Bharati Broadcasting Corporation of India, represented by Director General, Doordarshan, Mandi House, New Delhi-1
2. Sri T.R.Malakar, IBPS, Acting Director General, Doordarshan Broadcasting Corporation of India, Doordarshan Bhawan, New Delhi-1
3. Chief Executive Officer, Prasar Bharati Broadcasting Corporation of India, Doordarshan Bhawan, New Delhi-1
4. Deputy Director (Administration), Prasar Bharati Broadcasting Corporation of India, Directorate General, Doordarshan Bhawan, New Delhi-1
5. B.Panigrahi, Station Director, Doordarshan Kendra, Under Order of Transfer to Doordarshan Kendra, Bhubaneswar

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Respondents

By the Advocates

Mr.S.B.Jena, A.S.C.  
(Res. 1 to 5)

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O R D E R

MR.SOMNATH SOM, VICE-CHAIRMAN: Heard Shri Ashok Mohanty, learned senior counsel for the applicant, assisted by Shri A.C. Swain and Shri S.B.Jena, learned Addl.Standing Counsel for the respondents. At the instance of learned counsels of both

sides the matter has been taken up for hearing and final disposal even though this was posted to-day for consideration of Misc.Application No.854/2001.

2. In this Original Application the petitioner, who was working as Director, Doordarshan Kendra, Bhubaneswar and who had been transferred in order dated 23.5.2001 vide Annexure-1 as Director, Doordarshan Kendra, Patna, has prayed for quashing the impugned order of transfer at Annexure-1, in so far as it relates to him and also for direction to Respondents 1 to 4 to allow him to continue as Director, Doordarshan Kendra, Bhubaneswar. Respondents have filed their counter opposing the prayer of the applicant. No rejoinder has been filed. We have perused the pleadings.

3. Learned senior counsel for the applicant Shri Ashok Mohanty has urged three points in support of his prayer for quashing the impugned order of transfer at Annexure-1 which are discussed below.

4. <sup>point</sup> The first urged by Shri Mohanty is that according to transfer policy dated 10.09.1982 (Annexure-6) members of staff who are within three years for attaining the age of superannuation if posted at their home towns would not be shifted therefrom and if it becomes necessary to post them elsewhere efforts would be made to shift them to or near their home towns to the extent possible. Admittedly the applicant is due for superannuation on 30.6.2003 and thus the order of transfer dated 23.5.2001 has been issued when the applicant had less than three years of service for attainment of the age of superannuation. It is submitted by the learned Addl. Standing Counsel Shri S.B.Jena that this circular at

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Annexure-6 is not a statutory one nor does it lay down an inexorable rule that persons within three years of retirement on superannuation cannot be transferred at all. It is also submitted by the learned Addl. Standing Counsel that the applicant has been working at Bhubaneswar from 1993 and has thus completed more than seven years of stay at Bhubaneswar. Secondly it is submitted by Shri Jena that Hon'ble Supreme Court in a series of decisions have laid down that it is for the Departmental authorities to decide who should be posted where and the scope of interference by the Tribunal in such cases is very limited. Lastly it is submitted by Shri Jena that respondents have pointed out that transfer of the applicant has been made in public interest and in exigency of service.

5. We have considered the above rival submissions carefully. Admittedly the applicant has been working at Bhubaneswar from 1993. Respondents in Para-2 (Page-3) of their counter have stated that the normal tenure is for four years. In that event respondents should have taken steps to transfer the applicant out of Bhubaneswar sometimes in 1997 when he had completed his tenure of four years at Bhubaneswar and had more than three years of service for attaining the age of superannuation. There is no averment in the counter that at any point of time ever such transfer order was made and was cancelled at the instance of the applicant. In view of this, stay of the applicant at Bhubaneswar from 1993 cannot be a ground to transfer him when he ~~had~~ less than three years for attaining superannuation. It is no doubt true that the circular at Annexure-6 is not

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a statutory one. But as this is a transfer policy formulated by the respondents themselves, they are obliged to be guided by the same. Hon'ble High Court of Orissa in the case of Ganesh Prasad Patra vs. United Bank of India, reported in 85 (1998) C.L.T. 444, while dealing with a batch of cases of transfer of officers of a Nationalised Bank in Orissa held that where the transfer policy/guidelines have been laid down, the banking authorities were required to follow the same and make the transfers in accordance with that policy. It is also nodoubt true, as has been submitted by Shri Jena that Para-XIII of the transfer policy at Annexure-6 does not rule out transfer to be effected with a period of threeyears till the date to attain the age of superannuation if the same is required to be done on the other grounds. But in the instant case respondents have not indicated on what ground the applicant has been transferred. It has been merely stated that the applicant has been transferred in public interest and in the exigency of service. We find some force in the contention of Shri Mohanty that transfer of the applicant from Bhubaneswar to Patna has not been made because of some lapses and/or deficiencies on his part, because in the impugned order of transfer he has been posted as Director, Doordarshan Kendra, Patna, which is an equally responsible and important post. Hon'ble Supreme Court in the case of Baldev Raj v. Union of India reported in AIR 1981 SC 70 have laid down that where an administrative order is challenged and the reply to it is that order has been issued in public interest then it is incumbent for the State to disclose the material showing what the public interest is. That was a case

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of compulsory retirement. But the principle laid down by the Hon'ble Supreme Court will also apply in the case so far as plea of public interest as urged by the respondents is concerned. The observations of their Lordships of the Hon'ble Supreme Court are quoted below :

"...When an order is challenged and its validity depends on its being supported by public interest the State must disclose the material so that the Court may be satisfied that the order is not bad for want of any material whatever which to a reasonable man reasonably instructed in the law, is sufficient to sustain the grounds of 'public interest' justifying forced retirement of the public servant. Judges cannot substitute their judgment for that of the Administrator but they are not absolved from the minimal review well-settled in administrative law and founded on constitutional obligations. The limitation on judicial power in this area are well known and we are confined to an examination of the material merely to see whether a rational mind may conceivably be satisfied that the compulsory retirement of the officer concerned is necessary in public interest".

In the instant case no such pleadings have been made. In view of this we hold that the departmental authorities have clearly ignored their own circular at Annexure-6, while transferring the applicant and even they have also not indicated any reason as to why the general rule could not be followed in this case.

6. We are aware that in the cases of transfer the scope of interference by the Tribunal is somewhat limited. This has been laid down by the Hon'ble Supreme Court in a number of cases. But that does not mean that the Tribunal is powerless when confronted with a case where a person has been transferred in contravention of the departmental policy/guidelines and no explanation whatsoever has been given in the counter as to why this has been done. This

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contention of Shri Jena is, therefore, held to be without any merit and the same is rejected.

7. The next point urged by Shri Mohanty is that the order of transfer has been tainted with malice in so far as applicant is concerned as Shri B.Panigrahi (Res. 5) belonging to lower Grade in the Senior Time scale has been posted as Director, Doordarshan Kendra, Bhubaneswar, wherein it has been directed that Shri Panigrahi would function as Head of Office. It is submitted by Shri Mohanty that effectively the post of Director, Doordarshan Kendra, Bhubaneswar in the Junior Administrative Grade is vacant even after joining of Shri Panigrahi (Res.5).

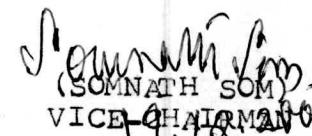
8. One other point requires to be noted in this connection. It is submitted at the time of hearing that obeying the order of transfer the applicant has already joined as Director, Doordarshan Kendra, Patna. The applicant, had prayed by way of interim relief that he should be allowed to continue as Director, Doordarshan Kendra, Bhubaneswar pending disposal of the Original Application. In order dated 17.9.2001 the Tribunal did not grant the interim prayer, but made it clear that in case the applicant joined at Patna pursuant to Annexure-1 then his joining at Patna would be without prejudice to the stand taken by him in the Original Application. In view of this the fact that the applicant has joined at Patna obeying the order of Transfer at Annexure-1 by itself would not render the Original Application infructuous. If that be the case then in every case of transfer where the interim order of stay is not granted, the O.A. would, ip so facto become infructuous.

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 9. In view of this, even though the applicant has gone and joined at Patna, in view of our above discussions, we hold that the order of transfer at Annexure-1 in so far as it relates to applicant is not sustainable and the same is, therefore, quashed. Respondents are directed to issue order retransferring the applicant from Patna to Bhubaneswar within a period of 60(sixty) days from the date of receipt of a copy of this order.

10. In the result, the Original Application is allowed as above, but without any order as to costs.

  
 (N. PRUSTY)  
 MEMBER (JUDICIAL)

  
 (SOMNATH SOM)  
 VICE-CHAIRMAN

B.K.SAHOO//