

2

O.A.NO.115/2003

1. ORDER DATED 05-03-2003.

On being mentioned before the Hon'ble Vice-Chairman, this matter is taken up today.

2. Heard Mr. D.P. Dhalsament, Learned Counsel appearing for the Applicant, and Mr. A.K. Bose, Learned Senior Standing Counsel for the Union of India (on whom a copy of this Original Application has been served) appearing for the Respondents and perused the records.

3. Applicant K.N. Rao, having faced transfer (under Annexure-2 dated 12-09-2002) from Cuttack Bench to Mumbai Bench of the Income-tax Appellate Tribunal, had filed an Original Application No. 824 of 2002 (U/s. 19 of the Administrative Tribunals Act, 1985) in this Tribunal; wherein he challenged the said order of transfer dated 12-09-2002. The said case (in which the Applicant raised grounds that the order of transfer to be a punitive one and issued with intention to accommodate some one else at Cuttack and the same was really not in the "interest of administration"/"public interest" was disposed of on 5th day of February, 2003 with a direction to the President of the Income-tax Appellate Tribunal, Mumbai (Respondent No. 1) to reconsider the matter of transfer of the Applicant from Cuttack to Mumbai Bench of the Income-tax Appellate Tribunal. The relevant portion of the order dated 05-02-2003

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3

O.A.NO.115/2003

contd...Order No.1 dated 05-03-2003.

(as at Annexure-4 of the Original Application) reads as follows:-

*3. Transfer being an incident of service (especially when the Applicant is holding the post of Senior Private Secretary, having all India transfer liability), the Authorities are competent to redress the grievances of the Applicant. The Hon'ble Apex Court of India, have also, time and again, observed that the Courts/ Tribunals should not interfere in the order of transfer. But in view of the peculiar facts and circumstances of the case, this Original Application is disposed of requiring the President of the Income-tax Appellate Tribunal (at Mumbai) to look into the grievances of the Applicant and to reconsider the matter (relating to his transfer from Cuttack to Mumbai) by the end of February, 2003."

Under Memorandum dated 28th February, 2003 (Annexure-6) to this Original Application) passed by the Registrar of the Income-tax Appellate Tribunal (Mumbai) the grievances of Applicant has been turned down.

4. It appears that the said rejection order (under Annexure-6 dated 23-02-2003) has been passed "with the approval of the President of the Income-tax Appellate Tribunal".

5. When the direction dated 5th February, 2003 of this Tribunal rendered in Original Application No.824 of 2002 required the President of the Income-tax Appellate Tribunal (Mumbai) to give consideration, the Registrar of

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4

O.A.NO.115/2003

contd...Order No.1,dated 05-03-2003.

the said Tribunal ought not to have passed orders; just with the approval of the President - rather the president of the Income-tax Appellate Tribunal (Mumbai) ought to have given consideration to the matter and passed a reasoned order. In fact, the impugned order (under Annexure-6 dated 28th February, 2003) is bereft of any discussions and reasons; for which the same is not sustainable.

6. In the aforesaid premises, after having heard the learned Counsel for both sides, instead of keeping this matter (pertaining to transfer of an employee) pending, the same is again remitted back to the President of the Income-tax Appellate Tribunal (Mumbai) requiring him to personally examine the grievances of the Applicant (as raised in his representations at Annexures-2 and 5 and in this Original Application) and pass a reasoned/speaking order by the end of March, 2003. Until such final consideration is given by the President of the Income-tax Appellate Tribunal (Mumbai) the Respondents are directed to allow the Applicant to continue at Cuttack Bench of the Income-tax Appellate Tribunal. With these observations and directions this Original Application is disposed of at the admission stage.



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5
O.A.NO.115/2003

Contd...Order No.1, dated 5-03-2003.

7. Send copies of this order, alongwith copies of this Original Application, to the Respondents and free copies of this order be given to learned counsel appearing for both the parties.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 05/03/03

KNM/CM.

Copy of order
dt. 5/3/02 a/w
O.A. copy issued
to all the respondents.
by Posts.

The same copy
of order issued
to the counsel
for both side,

SD. 6/3/03

By
6/3/03