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ORDER DATED 07-05-2003.

Having been relieved from ARC, Charisatia under an order dated 01-02-2003 (without any order of transfer being served) to join at ARC, New Delhi; the Applicant had moved this Tribunal in an earlier Original Application (No.82 of 2003); wherein, after hearing the learned Counsel for both sides, this Tribunal disposed of the same (on 19.2.2003) with the following directions:-

*My
8/5/03*

S.O. 107

*From the facts and circumstances stated above, since the order of relief under Annexure-3 dated 01-02-2003 smacks of mala fide (the same having been issued shortly after intervention of this Tribunal in O.A.No.995/2002), I think it just and proper to command the Respondent No.2 (to whom the Applicant has made a representation under Annexure-2 dated 16.10.2002) to reconsider the matter of transfer and relief of the Applicant from ARC, Charisatia to ARC, New Delhi within a period of thirty days from the date of receipt of a copy of this order (by treating this averments made in this Original Application to be a representation addressed to him) and till then the order of relief under Annexure-3 dated 1-2-2002 shall not be given effect to and, as a consequence, the Applicant should now be allowed to continue in his former post at ARC, Charisatia".

*Passing of
After the aforesaid directions of this*

Tribunal, the matter was reconsidered by the Respondents and, under Annexure-5 dated 13-3-2003, the prayer of the Applicant (for continuance at ARC, Charisatia) was turned down. Hence the Applicant has filed this second Original Application under section 19 of the Administrative Tribunals Act, 1985 challenging the orders under Annexure-5 dated 13.3.2003 and under Annexure-6 dated 18.3.2003.

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2. Respondents have filed their counter, virtually, reiterating the grounds taken in the order of rejection of the representation of the Applicant under Annexure-5 dated 13-3-2003.

3. Applicant has filed a rejoinder today, after serving a copy thereof on the other side; wherein he has enclosed a copy of the draft seniority list of AFC(PD) and the policy of transfer dated 16.09.1988 as Annexures-A/1 and A/2 respectively.

4. Heard Mr.B.S.Tripathy, learned Counsel for the Applicant and Mr.A.K.Bose, learned Senior Standing Counsel appearing for the Respondents and perused the records.

5. During the course of argument, learned counsel for the Applicant, apart from reiterating his old and stale arguments, has submitted that while rejecting the grievances of the Applicant for retaining him at ARC, Charisatia under Annexure-5 dated 13.3.2003, the Respondents have failed to take note of the provisions of the transfer policy (as enclosed to the rejoinder) wherein the tenure of posting has been provided as 'three years'. As such, it has been argued by him that the transfer of the Applicant to ARC, New Delhi, within a short span of time is liable to be quashed. Mr.Bose, Learned Senior Standing Counsel has opposed the submissions made by the learned Counsel for the Applicant. He has also submitted that since the circular

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dated 16.9.1988 under Annexure-A/2 to the rejoinder is only a guiding principle and not a mandatory one, the present transfer of the Applicant to ARC, New Delhi cannot be said to be bad.

6. It appears, while passing the order of rejection (under Annexure-5 dated 13.3.2003) of the prayer of the Applicant for retaining him at ARC, Charibatia, the Respondents have not taken into consideration the transfer policy as enclosed to the rejoinder. Fact remains that the Applicant, on being transferred from ARC, New Delhi joined at ARC, Charibatia only on 3.9.2001 and, as it appears, under the circular issued by the Respondents, he is entitled to continue at ARC, Charibatia for a period of minimum three years i.e. upto September, 2004. It has further been disclosed by the Advocate for the Applicant that no other circulars have been issued superseding the circular dated 16.9.1988. In the said premises, I would like to observe that when a policy has already been evolved by the Respondents in the matter of transfer and posting of its employees, they should not have disregarded the same. Since the order of rejection under Annexure-5 is bereft of the policy of transfer, I feel inclined that the ends of justice would be met, if the matter is remanded back to the Respondents No. 2 for giving a fresh look to the grievance of the Applicant by taking into consideration the circular dated 16.9.1988 (Annexure-A/2); which they should do within a period of thirty

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days from the date of receipt of a copy of this order and till a decision is taken in the matter, the Applicant should not be disturbed from ARC, Charleatia.

7: In the result, therefore, this Original Application is disposed of with the above observations and directions. No costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 07-01-03