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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 407 OF 2003
Cuttack this the 26th day of Sept./2003

Sudhiranjan Senapati ... Applicant(s)

VERSUS

Union of India & Ors. ... 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 ? Yes

Mall
(M.R. MOHANTY)
MEMBER (JUDICIAL)

26/09/03

Indu
(B.N. SOR)
VICE-CHAIRMAN

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CUTTACK BENCH: CUTTACK

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CORAM:

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

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Sri Sudhiranjan Senapati, aged about 38 years,
S/o. Sri Baishnab Charan Senapati, At present
working as Joint Commissioner of Income Tax,
Range-II, Bhubaneswar, Dist-Khurda, Ayakar
Bhawan, Rajaswa Vihar, Bhubaneswar

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Applicant

By the Advocates

M/s.A.K.Sahoo
R.Das, B.B.S.
Mohapatra,
B.B.Bharati

-VERSUS-

1. Union of India represented through Secretary,
Revenue, North Block, New Delhi
2. Chairman, Central Board of Direct Taxes,
North Block, New Delhi
3. Chief Commissioner of Income Tax, Orissa,
Bhubaneswar, Ayakar Bhawan, Rajaswa Vihar,
Bhubaneswar, Dist-Khurda

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Respondents

By the Advocates

Mr.A.K.Bose, S.S.C.

O R D E R

MR.B.N.SOM, VICE-CHAIRMAN: Applicant, Shri Sudhiranjan
Senapati, by filing this Original Application under Section
19 of the Administrative Tribunals Act, 1985, challenges
the order of transfer dated 20.5.2003 (Annexure-2) and the
order dated 10/11.7.2003 (Annexure-5) rejecting his ~~pass~~ representation
against the said order of transfer, ~~respectively~~
passed by Respondent No.3. The applicant has prayed for
quashing those two orders under Annexures-2 and 5 and to

allow him to continue in the present post at Bhubaneswar.

2. The facts of the case in brief are that the applicant was working as Joint Commissioner of Income Tax (Range-II) Bhubaneswar when he was faced with the order of transfer dated 20.5.2003. He is a direct recruit Indian Revenue Service Officer of 1990 batch and was transferred to Cuttack in June, 1998 and then to Bhubaneswar in 1999 and continued in the same post thereafter. Respondent No.3 by his Office letter dated 5.3.2003 asked the applicant for his option for his transfer, in response to which the applicant submitted his option that either he may be continued in Bhubaneswar or transferred to Cuttack on the ground that his mother, who is a cardiac patient is undergoing treatment at Kalinga Hospital, Bhubaneswar. The grievance of the applicant is that his request was not acceded to and he was ordered to join at Rourkela as Joint Commissioner of Income Tax, Rourkela Range. On 22.5.2003 he submitted a representation to Respondent No.3 praying therein for cancellation of his transfer on the health ground of his mother, and that such specialized treatment is not available elsewhere in Orissa. Soon thereafter he also filed Original Application No.343/2003 before this Tribunal. The Tribunal, by its order dated 12.6.2003 directed Respondent No.3 to consider the genuine difficulties of the applicant, as stated in the representation with regard to his continuance in Bhubaneswar/nearby place within a period of one month and until then the applicant be allowed to stay at Bhubaneswar. Respondent No.3, by his order dated 11.7.2003 rejected the representation

of the applicant and directed him to join at Rourkela. Being aggrieved by this order the applicant has filed this Original Application alleging that the order of transfer is perverse and in disobedience of the order passed by this Tribunal for which the same is liable to be quashed. He also assailed the order of transfer as ill motivated and malafide in nature because of the fact that this Tribunal in its order dated 12.6.2003 directed the Respondents to consider his representation as aforesaid.

3. The Respondents have refuted the allegations by filing a counter and have submitted that the application being devoid of merit is liable to be dismissed. They have denied that they have in any way violated the order of this Tribunal dated 12.6.2003. They have further stated that the applicant, in fact by quoting Para-4 of the order has made an attempt to create confusion by diversifying it from the complete context for which it was given. The Respondents have submitted that they have carefully complied with the observation and direction of the Tribunal as mentioned in Para-5 both in letter and spirit. They have reiterated that the transfer order dated 20.5.2003 was issued by Respondent No.3 after holding discussion with the applicant when two other officers, viz., the then Joint Commissioner of Income Tax, Range-1, Cuttack and the then Joint Commissioner of Income Tax(Hqs) (Admn) were present in his chamber and that the applicant had consented for his posting as Joint Commissioner of Income Tax, Rourkela. It is further submitted that the transfer of the applicant has been done as per the transfer

guidelines of the Govt. of India, Ministry of Finance, Department of Revenue, issued for Group A and Group B officers, wherein it is stipulated that officers posted in a place like Bhubaneswar will have a tenure of normally three years. The transfer guidelines also stipulated that an officer is liable to be transferred to any part of the country at any time at short notice on administrative ground, that the transfer of the applicant was done on administrative exigencies/requirements and the biggest challenge before Res.3 was to fill up the post of Joint Commissioner of Income Tax, Rourkela, which was lying vacant for long time, ~~in public interest~~, because Rourkela is the ~~second~~ highest revenue collection centre in the State. Refuting the allegation that he has been singled out for transfer from Bhubaneswar, the Respondents have submitted that there were three officers working at Bhubaneswar, who had completed more than three years, out of which the applicant was posted to Rourkela in preference to other two, because both of them are deployed in computerization and technical matters in the headquarters of the Chief Commissioner of Income Tax, Orissa and continuity is to be preserved in both the areas of computerization and technical matters in the headquarters, their stay at Bhubaneswar has been maintained in public interest. With regard to the need of specialized medical facility for the treatment of the applicant's mother, the Respondents have submitted that Rourkela has also excellent medical facility and that I.G.Hospital at

Rourkela is equally well, if not has better, medical facility, having equipments for treatment of Cardiac patients. Having regard to this fact, Respondent No.3 was satisfied that the applicant's need for specialized medical care would be adequately met at Rourkela also. Further they have submitted that as the applicant belongs to all India Service he is transferable to any station within India and that he being a Group A officer of the Central Government is expected to strike a balance between the personal inconvenience and the requirement of the administrative necessity and also the public interest. On the above grounds, the Respondents have opposed the prayer of the applicant.

4. We have heard Shri A.K.Sahoo, the learned counsel for the applicant and Shri A.K.Bose, the learned Senior Standing Counsel appearing on behalf of the Respondent-Department. We have also perused the records as well as the rejoinder filed by the applicant.

5. The main thrust of the applicant's case is that he has been transferred from Bhubaneswar to Rourkela out of malice. It is also the case of the applicant that Respondent No.3 has not complied with the order dated 12.6.2003 of this Tribunal. We have given our anxious consideration to the arguments advanced at the Bar. It is now the settled position of law that the Courts/Tribunals will be slow in interfering in the matters of transfer. We would also like to recall here what Their Lordships of the Hon'ble Supreme Court in the case of Asif Hamid vs. State of J&K, reported in 1989 Supp.(2) SCC 364 (in paragraph 19) observed as under:

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" When a State's action is challenged, the intention of the Court is to examine the action according to law and to determine whether the Legislator or the Executive has acted within the powers and functions assigned under the Constitution and if not, the Court must strike down the action. While doing so, the Court must remain within its self master limits ... while exercising powers of judicial review on an administrative action, the Court is not an appellate authority. The Constitution does not permit the Court to direct and advise the Executive in matters of policy or summonise qua any matter which under the Constitution, lies within the sphere of Legislator or Executive, provided, these authorities do not transgress their constitutional limits or statutory powers".

6. Shri A.K.Bose, the learned Senior Standing Counsel has relied on three case laws, where the Apex Court have given direction to the Court/Tribunal with regard to dealing with the cases of transfers of Govt. employees.

In the case of Union of India vs. S.L.Abas reported in AIR 1993 SC 2444, their Lordships/ have clearly stated that guidelines issued by the Government do not confer upon employees any legally enforceable right and therefore, even if an order of transfer is made without following the guidelines that order cannot be interfered with by Court unless it is vitiated by mala fides or is made in violation of statutory provisions.

In the case of State of Punjab vs. Joginder Singh reported in AIR 1993 SC 2486, their Lordships of the Hon'ble Apex Court observed "this Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servants from one place to another. ... Ordinarily, the Courts have no jurisdiction to interfere with the order of transfer".

Further in the case of Rajendra Roy vs. Union of India & another in Civil Appeal No.4866/92 (arising out of S.L.P. (Civil) No.19506 of 1991) (decided on it was 17.11.1992), held that "for interference in the order of transfer, there must be firm foundation of facts pleaded and that the Courts can interfere only if the malice or mala fide on the part of the Respondents in passing the impugned order of transfer is substantiated".

7. In this case the allegation levelled by the applicant is that he was posted out on account of malicious intent. But neither in his original Application nor in his rejoinder nor during the oral argument any material could be placed on record to establish malice/mala fide. xx Their Lordships of the Hon'ble Apex Court in the case of Rajendra Roy (supra) have observed that "it is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employee, but on that score the order of transfer is not liable to be struck down". As observed in that case by their Lordships, we also find in the instant case that it does not appear to us that the applicant has been moved out just to get rid of him or the impugned order of transfer was passed mala fide by seeking an opportunity to transfer him from Bhubaneswar to Rourkela. The Respondents have clearly stated that one officer had to be posted to Rourkela to hold the independent charge of that Range which had tremendous revenue prospects. Therefore, the overriding consideration was to meet the revenue collection and enhancing tax payers' satisfaction level and to fill

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up this position, the applicant was chosen, firstly, because he had already spent more than three years in the station at Bhubaneswar and therefore, was due for transfer in the normal course and secondly that he not being a computer or technical expert, his services could not be retained in Bhubaneswar and therefore, according to his proficiency and ability, his transfer to Rourkela became indispensable. It has also been held by the Apex Court in very many cases that it is within the domain of the administration to decide who should be posted where and at what time. In the face of these facts and circumstances of the case and the law on the subject, we are of the view that the decision of Respondent No.3 in posting the applicant at Rourkela is unassailable.

Last not but the least, our interim order if that reflected that the concern of the applicant to take care of his mother's health should be kept in view by the Respondent No.3, has also been more than met when the Respondents submitted that the medical facilities at I.G.Hospital, Rourkela is having equally if not better facilities than Bhubaneswar. This point having not been rebutted by the applicant in his rejoinder or during oral submission, we see no external reason for us to intervene in the matter.

8. For the reasons discussed above, we hold that this application is devoid of any merit, which is accordingly rejected, leaving the parties to bear their own costs.

(M.R.MOHANTY)
26/09/03
MEMBER (JUDICIAL)

(B.N.SOMI)
VICE-CHAIRMAN

B.jy.