

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NOS. 821, 822, 823, and 824 of 2003
Cuttack, this the 18th day of April, 2005.

DURYODHAN PALLEI & ORS. APPLICANTS.

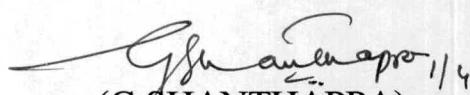
VERSUS

UNION OF INDIA & OTHERS. RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? — r/o —
3. Whether it be circulated to all the Benches of CAT or not? — r/o —


(B.N.SOM)
VICE-CHAIRMAN


(G.SHANTHAPPA)
MEMBER(JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NOS. 821, 822, 823, AND 824 OF 2003.
Cuttack, this the *1st* day of April, 2005.

C O R A M:-

**THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.G.SHANTHAPPA, MEMBER(JUDICIAL)**

Duryodhan Pallei & 3 Ors. Applicants.

VERSUS

UNION OF INDIA & Ors. Respondents.

For the Applicant : Smt. M.Das, Mr.M.Mohanty,
Ms.M. Rath,Advocates.

For the Respondents : Mr.S.B.Jena,ASC.

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O R D E R

MR. G.SHANTHAPPA, MEMBER(JUDICIAL):-

The facts and the issues involved in all the four Original Applications being one and the same, we club all the cases together and pass this common order.

2. The above OAs are filed under section 19 of the Administrative Tribunals Act, 1985 with the following prayers:-

That this Hon'ble court may issue a direction to the Respondent No.3 to quash the office order dated 01-11-2003 (Annexure-8) transferring the services of the Applicant from Kausalyaganga head quarters to PAD of CIFA, Hasaraghata, Bangalore, without any delay”

3. Since the relief is common, we consider the Original Application No.821 of 2003 as a leading case.

4. The Applicants in all these four cases are working as SG Gr.III(Gr.'D') under the Respondents i.e. Central Institute of Fresh Water Acquaculture (in short 'CIFA'), Kausalyaaganga, Bhubaneswar, which is under the ICAR. The first and the second applicant are the members, third applicant is treasurer and the fourth applicant is the President of the Association called " Central Fisheries Research Employees Association" (in

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short 'Association'). Applicants are challenging the impugned orders of transfer dated 1.11.2003 under Annexure-A/8. The grievance of the Applicants is that since they are Gr. D employees and they are the office bearers of the Association, they should not be transferred from the places where they are now working. The ~~Applicants~~ have filed the transfer guidelines. The Applicants have been transferred from CIFA, Kaushalyagang, Bhubaneswar to PAD of CIFA, Hesaraghat, Bangalore. According to the transfer guidelines/circular dated 23.11.1978 (Annexure-A/1), low paid employees should not be transferred to the places away from their residence, as far as possible.

5. The Gr. D employees who are recruited locally where the institute is situated, they are not entitled to be transferred to remote area from the recruiting institution. The impugned order is not in public interest, and is mala fide in nature. The guidelines/circular do not permit transfer of the employees like the present Applicants from the headquarters to the regional stations and vice versa and in case of such transfer prior permission of SDM of ICAR headquarters should be obtained.

6. Per contra, the Respondents have submitted that the impugned order has been made in the public interest and that the transfer being an incident of service the interference by the Courts/ Tribunals is unwarranted.



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The impugned order of transfer was passed due to administrative exigencies and not by way of punitive measure and while ordering such transfer utmost care has been taken. They have taken the stand that there has been no violation of any statutory guidelines/Rules while ordering such transfers. Gr. D employees can be transferred to outstations in exigencies of service. The allegations made against the Director are false and baseless. There has been no allegation of mala fide against any particular officer ; nor any such authority has been arraigned as Respondents by name in this proceeding. All the Applicants have already been relieved by the Administraive Officer(who is the Appointing Authority) from Kausalyaganga, in order to join at the Regional Research Centre i.e. Peninsular Acquaculture Division of Hessaraghata (P.A.D) CIFA under the Directorate of CIFA Kausalyaganga, Bhubaneswar. It is in this back ground, the Respondents have urged that the Tribunal should not interfere in the order of transfer and have for dismissal of the Original Applications being devoid of any merit.

7. The admitted facts of the case are that in the order of appointment of the Applicants dated 22.2.1989 it was made clear that the appointment carries with it the liability to serve in any part of India. Admittedly, the Applicants are Gr. D employees and they the office bearers of the Association and passed a resolution dated 7.7.2003 against the

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Director General , ICAR. The Gr.D employees can be transferred to out side stations in exigencies of public service. Since the transfers have been made in exigencies of public service, it would not be proper for this Tribunal to interfere with the same. The transfer guidelines/scheme has no statutory force which are issued only for administrative purposes. The Hon'ble Supreme Court has time and again held that it is not for the Courts/Tribunals to interfere with the administrative orders, unless there is any violation of the statutory and mandatory Rules and/or mala fides are alleged against a particular officer is proved to the hilt.

8. We have carefully examined the contentions raised by the both sides. It is the case of the Applicants that they being the Gr.D employees and members of the Association, should not be subjected to transfer outside the station. Learned counsel appearing for the Respondents has brought to our notice para-3 of the offer of appointment dated 22.2.1989 made to the Applicants wherein it is stipulated that the appointment carries with the liability to serve in any part of India. Such being the position, the contentions of the learned counsel for the Applicants that they should not be transferred outside the station do not stand to reason.

9. It is to be noted this Tribunal vide its order dated 17.11.2003 while directing issuance of notices to the Respondents, the prayer for interim

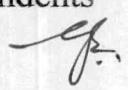
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relief for staying the impugned order of transfer was rejected ; against which the Applicants moved before the Hon'ble High Court of Orissa in WP© No.12367 of 2003.In Misc. Case No. 12041 of 2003 and 4427 of 2004, the Hon'ble High Court ordered that STATUS QUO OF THE APPLICANT SHALL BE MAINTAINED. The Respondents have relied on the decision of the Hon'ble Apex Court reported in AIR 1991 SC 532 rendered in the case of **SHILPI BOSE vrs. STATE OF BIHAR; Union of India Vrs. H.N.Kirtania** reported in 1989(3) SSC 445 ; **GUJURAT ELECTRICITY BOARD vrs. ATMARAM SUNGOMAL PASHANI** reported in AIR 1989 SC 1433.and of this Tribunal rendered in O.A.No.172 of 1996 (Dillip Kishore Mohanty vrs. Union of India and others).

10. Since the impugned orders are administrative in nature and mala fide has not been urged against any particular officer, the contention of the Applicants that the Respondents have violated the guidelines of transfer, under Annexure A/1 does not hold any water.Para 4.1.4. indicates that Class III and Class IV employees of the Institute/Regional/Sub-Stations will not be covered by the decision, for the reason that they are ordinarily recruited by local advertisement or by inviting nominations from Regional Employment Exchange; unless their term of appointment provide for such inter transfers.The furether contention of the applicants is that the Respondents



have not obtained the prior permission of the headquarters. In reply to this, the Respondents have specifically answered that the transfer orders have been issued in public interest and in exigency of service and they have further stated in their additional counter that the Hessaraghata is under the administrative control of CIFA, Kausalyagan, Bhubaneswar and so far as supporting staff are concerned, the Administrative Officer is the appointing authority. At present, there are five sub offices under the Directorate of CIFA, Bhubaneswar, i.e, K.V.K./T.T.C., Bhubaneswar, Regional Research Centre at Rahara, West Bengal, Regional Research Centre at Kalyani, West Bengal, Regional Centre at Bangalore, Regional Centre at Ludhiana, Punjab and for all the supporting staff one seniority list/ common gradation is maintained as the Administrative Officer, CIFA, Bhubaneswar is the Appointing Authority. In support of their contention, the Respondents have produced the brochure of cadre strength of I.C.A.R. Institutes for Agricultural Research Scientists. As per the contention made by the Respondents, the services of the applicant can be utilized in any one of the Centres, referred to above. As per the orders of appointments, their services can also be utilized in any part of the country. The Hon'ble Supreme has time and again held that the order of transfer being the administrative order, the Courts/Tribunals should not interfere. If at all any hardship is caused to



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the children of the employee studying in the schools, such transfer should be restrained till the end of academic year. The transfer orders apparently were issued during the mid academic session. However, the applicants have availed of the benefit of interim stay order since the date of filing of the Writ Petition before the Hon'ble High Court of Orissa, notwithstanding the fact that they have already been relieved from CIFA, Bhubaneswar.

11. Question for our consideration in this Original Application as to whether this Tribunal can interfere with the order of transfer. In this context we rely on the judgment of the Apex Court reported in (2002) SCC(L&S) 21 in the case of National Hydroelectonic Power Corporation Ltd., versus Sri Bhagawan, wherein it has been held by their Lordships that the Court/Tribunal should not interfere with the order of transfer, as a Government servant has no legal right to work in a particular place. The judicial interference in the matter of transfer is uncalled for. We have carefully taken note of the decisions referred to by the Respondents and one of the judgments reported in 1994 Supp.(2) Supreme Court Cases 666. Paragraph 2 of the said judgment is extracted below :

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“The Tribunal has erred in law in holding that the respondent employee ought to have been heard before transfer. No law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration. However, the learned counsel for

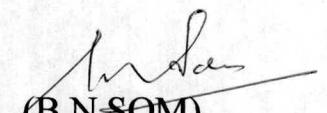
Yours,

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the respondents contented that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the applicant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs".

12. We have carefully examined the rival contentions raised by the parties. On the basis of various judge-made-laws, and for the reasons discussed above, we are not inclined to interfere with the impugned order of transfer. In the circumstances, all the four OAs are dismissed with no order as to costs.

13. However, the above dismissal of the OAs shall not stand in the way of the respondents to give a fresh look to the cases of the applicants sympathetically, if they so desire.



(B.N.SOM)
VICE-CHAIRMAN



(G.SANTHAPPA)
MEMBER(JUDICIAL)