

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 13 OF 2004
Cuttack this the 12th day of March/2004

Pravakar Behera ... Applicant(s)

• • •

Applicant(s)

-VERSUS-

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

(M.R.MOHANTY)
MEMBER (JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

2

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 13 OF 2004
Cuttack this the 12th day of March/2004

CORAM:

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

...

Sri Pravakar Behera, 42 years,
Son of late Biswanath Behera,
Dagarpura Baliasahi, Chandini Chowk
Cuttac-2 at present serving as Deputy
Conservator of Forest being posted as
D.F.O., Khurda Division, Khurda

...

By the Advocates

Applicant

M/s. A.K. Mishra
J. Sengupta
D.K. Panda
P.R.J. Dash
G. Sinha

-VERSUS-

1. Union of India represented through its Secretary to Govt. of India, Ministry of Forest and Environment, Paryabharan Nigam, C.G.O. Complex, Lodhi Road, New Delhi
2. State of Orissa represented through Secretary to Govt. of Orissa, Department of Forest and Environment, Bhubaneswar

...

By the Advocates

Respondents

M/s. U.B. Mohapatra, ASC
Mr. K.C. Mohanty,
G.A.

O R D E R

MR.B.N. SOM, VICE-CHAIRMAN: This Original Application has been filed by Shri Pravakar Behera, an officer of Indian Forest Service, challenging the order of transfer dated 16.1.2004 (Annexure-5) transferring him from the Post of Divisional Forest Officer (in short D.F.O.) Puri to the post of Principal, Forest Rangers Training College, Angul.

2. This Tribunal on 27.1.2004 while directing

8

issuance of notice to show cause/file counter by the Respondents, as an interim measure, stayed the operation of the impugned order under Annexure-5 and this interim order is continuing till date.

3. The State Government of Orissa (Respondent No.2) filed its counter on 13.2.2004 opposing the prayer of the applicant and have prayed for dismissal of this O.A. being devoid of merit.

4. The applicant's case is that the transfer order under Annexure-5 has been issued without application of mind; it adversely affects the family interest of the applicant; the order was a motivated one only to disturb him from the present post and that it is an outcome of arbitrary exercise of power. Citing these grounds the applicant has submitted that the impugned order of transfer is not sustainable in the eye of law.

5. Respondent No.2, viz., the State Government of Orissa (represented through its Secretary in the Forest and Environment Department) have contested the application, inter alia explaining the administrative reasons which compelled the competent authorities to transfer the applicant from the post of D.F.O., Puri to the post of Principal, Forest Rangers Training College, Angul. It has been submitted by them that the applicant, while working as D.F.O., Puri flouted the directives dated 30.10.2002 issued by the Hon'ble Supreme Court; wherein the Court, keeping in view the national need for protection of forest lands and conservation of forests, prohibited granting of licence to Saw mills within 10 kms. radius

9

of the forests and in consequence of this order of the Apex Court, licences already granted to five Saw mills were cancelled. The applicant, who took over the charge as D.F.O., Puri on 23.12.2002 started granting licences to Saw mills afresh within the prohibited area and thereby violated the order of the Apex Court; as a result of which a suo motu contempt proceeding was initiated against him. The said contempt proceeding was disposed of on 19.12.2003 by the Apex Court after imposing on the applicant a cost of Rs. 50,000/-. Keeping in view the magnitude of the lapses on the part of the applicant in managing the affairs of his Division and because of his disobedience of the order of the Apex Court as well as his lack of administrative will he was shifted from this post. It has also been submitted that the personal problem of the applicant had been duly considered by the Government and it was observed that there would be no problem for the applicant to avail of adequate health-care facilities either from Cuttack or from Sambalpur or NALCO, while stationed at Angul, as and when required by him. With regard to his allegation that he has been posted to the job of Principal, Forest Rangers Training College, which had remained vacant for a long time, the Respondents have pointed out that it is not for the applicant to decide the place of his posting, but it is for the administration to decide who should be posted where and at what point of time, in the public interest. Finally, they have stated that the applicant has been proceeded against for his various acts of omissions and commissions while working as D.F.O., Puri and therefore,

administratively, it was not adviseable to retain him in that assignment any further. For the aforesaid reasons the application is shorn of merit, the Respondents have added.

6. We have heard Shri A.K.Mishra, the learned counsel for the applicant, Shri K.C.Mohanty, learned Govt. Advocate appearing on behalf of the State Govt. of Orissa and Shri U.B.MChapatra, learned Addl. Standing Counsel, appearing on behalf of the Union of India in extense, perused the rejoinder filed by the applicant as well as all connected papers adduced in this regard.

7. We have carefully considered the rival contentions advanced at the Bar and given our anxious considerations over the issue. The issue revolves round as to whether the impugned order of transfer under Annexure-5 was issued in public interest at all.

8. The applicant has levelled a series of allegations against the Respondents, as earlier stated, to persuade the Tribunal to hold that the order of transfer was not issued in public interest. In his representation dated 22.1.2004 before the Principal Secretary to Govt. of Orissa, Forests and Environment Department, the applicant had put forth a complaint that he was dragged into litigation before the Apex Court and therefore, initiating a departmental proceeding against him and transferring him out ipso facto tantamount to double jeopardy. He is being penalized more than once for the same mistake that was committed on bona fide belief and on good faith while discharging his official duties sincerely. Further,

by submitting his family difficulties he prayed for annulling his transfer to Angul and requested the Respondent(s) to either retain him in the present assignment or to post him at Cuttack. Having regard to his suggestion to post him at Cuttack, where one vacancy was available, it is the submission of the Respondent(s) that the applicant had earlier been posted there and had held an office at Cuttack for five ~~and~~ half years earlier.

9. On perusal of the applicant's representation and the submissions he has made in the Original Application, one factor is found to be common that "every time he was transferred, he had occasion to seek modification of the order" and was able "to get a posting at a place of his choice". The other aspect is that he exposes his lack of faith in the system. As has been submitted by the Respondents in their counter and also during the oral submissions, if posting/transfer of the officers were to be made giving priority to their personal/family problems, it would be difficult for the administration to manage the affairs of the State. We are in full agreement with this viewpoint and deprecate the inability of the applicant to submit facts in the proper perspective, viz., in his representation dated 22.1.2004 he had stated that "he was dragged into litigation". While the fact of the matter is that he had violated the directives of the highest judicial authorities in the country and he went on issuing licences to Saw mills in prohibited area creating embarrassment all around, he had to tender

unconditional apology before the Apex Court and was ultimately imposed a cost of Rs.50,000/-. Even then, there appears to be no trace of an iota of remorse in his mind. 19 He was taken to task by the Apex Court, which did not accept any of the pleas put forth by him, but out of magnanimity of their Lordships let him off without the rigour of heavy punishment to stir his administrative conscience. We are aghast to note that notwithstanding the observations of the Hon'ble Supreme Court in the Contempt Petition No. 401/2003, the applicant ~~was~~ imprudent to say that he was dragged into litigation whereas the fact remains that he ~~issued illegal orders~~ which ended in the contempt proceeding. What is more regrettable and surprising is that he has in his application stated that the "contempt proceedings has been dropped" while the truth is that he was discharged from the contempt proceedings with reproof and on imposition of costs of Rs.50,000/-, by the Apex Court.

10. From all these facts of the case it is clear that the applicant suffers from serious attitudinal problems and deserves to be intensively counselled to be able to act reasonably and understandably in matters of life.

11. So far as the merit of the case is concerned, we would like to note that it is now well settled principle that the Government has every right to transfer and/or post its employees wherever it deems fit and proper in the interest of public and in exigency of service and that the transfers so made are not subject to judicial

4

scrutiny nor judicially reviewable, unless and until any violation of statutory/mandatory rules and/or bias or mala fide intention of the authorities ordering transfer is proved to the hilt, and/or any arbitrary colourable exercise of power is established. In the fitness of things, we would like to focus our attention to the decision of the Hon'ble Supreme Court in the case of N.K.Singh vs. Union of India (reported in AIR 1995 SC 423) wherein the Hon'ble Apex Court have laid down that it is for the departmental authorities to decide amongst different employees, who should be posted where and the Courts/Tribunals cannot takeover the function of the departmental authorities in that regard.

11. Further, the applicant has not been able to place any material on record for us to believe that the action of the authorities in transferring him out of the present place of posting to Angul was not in public interest and/or that was an outcome of vindictiveness or there was no reason available for the authorities to have acted in a manner as they have. In fact, on an overall view of the matter it appears that the authorities could not have escaped taking action against an officer whose action was found to be overreaching the order of the highest judicial forum in the country and by his mindless and illegal actions he was endangering the public order and the environment. His deriliction of duty was of high magnitude and under no circumstances any authority, let alone the State Government of Orissa, could have glossed over the matter except to their own

peril. The reasons for his transfer which have been narrated by the Respondents, in our considered view, are in public interest and also in the interest of administration and nothing more or nothing less.

12. Before parting with this case, we would like to observe that the whole structure of the State rests upon public welfare and public interest and to run the administration smoothly and effectively various Departments under the Government have been established to achieve these aims and objectives. It is the sacred duty of the authorities at the apex of the Departments to see that the purpose for which the said Departments have been set up are not frustrated even by an inch, so that the public interest is achieved to the fullest extent and in that behalf it is always expected that the Govt. machinery ~~acts~~ with utmost certainty, consistency and uniformity. Thus the State being public welfare oriented and the authorities at the apex having the duties and responsibilities to safeguard the interest of public, by no stretch of imagination can any action taken by the said authorities be construed to be detrimental to public interest - far less to speak of individual interest. In this background, even if the terminology 'public interest and/or in the exigency of administration' is not there in the order of transfer, decidedly, it is to be held that such an action is public oriented. In the instant case, the applicant, who is an I.F.S. officer having all India transfer liability should not have taken this transfer as a bolt from the blues, but as a sincere,

- 9 - 15

obedient and loyal Govt. servant ought to have joined his new posting at Angul. It is high time to he recognises the limits of his right to protest with his duty to obey orders.

13. Having regard to what has been discussed above and having regard to the guidelines and law laid down by the Hon'ble Supreme Court in the matters of transfer from time to time, it is hardly a matter to be interfered with by this Tribunal. In the result, we dismiss this Original Application, being devoid of any merit. No costs.

14. Needless for us to mention that with the passing of the final order dismissing the Original Application, the interim order of stay, passed by this Tribunal on 27.1.2004 ceased automatically.

Sd/- M. R. Mohanty
Member (S)

Sd/- B. N. Sasm
Vice-chairman