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O.A.No.652 of 2004.

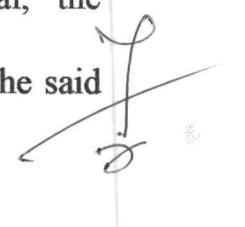
ORDER DATED 29-04-2005.

Heard the learned counsel for both the sides and perused the materials placed on record.

2. The Applicant, being aggrieved by the order dated 04.06.2004(by which he has been transferred and posted to Barbil. in modification/supersession of the earlier order of transfer dated 31.5.2004) had earlier approached this Tribunal in O.A.NO.251/04; which was disposed of on 20.08.2004.Relevant portion of the said order dated 20-08-2004 reads as follows:-

“Having regard to the facts and circumstances of the case as discussed above, we would direct Respondent No.3, i.e., Director General(Labour & Welfare), New Delhi, to consider the representations that the applicant and Res.No.4 should submit by 30.8.2004 to him for posting/retention at Bhubaneswar, keeping in view the problems ventilated by both the parties vis-à-vis the interest of administration and take a decision thereon within a period of 30 days from the date of receipt of representations(as directed above) and communicate the same within that period. The interim order dated 9.6.2004 will remain operative till a decision as directed above is taken by Respondent No.2”.

3. In compliance of the aforesaid direction of this Tribunal, the representations of the Applicant (as well as that of the Res.No.4 of the said

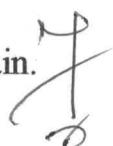


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O.A.) were disposed of under Annexure-4 dated 22-09-2004; relevant portion of which reads as follows:-

“The undersigned has full sympathy with Sh. H.K.Sahoo, WA on account of his wife's illness but at the same time Sh B.B.Prusty is himself suffering from cervical spondylosis and injury to spinal chord which necessitate his retention at Bhubaneswar as no proper medical facilities appear to be available at Barbil. Also Sh H.K.Sahoo has served more than half of his total service period at Bhubaneswar. And further, in the interest of administration also, the undersigned is convinced and satisfied that retention of Sh B.B.Prusty at Bhubaneswar is expedient and in order. The undersigned, therefore, orders Sh H.K.Sahoo, WA to report at Barbil in terms of O.O. No.A.38013/2/03-W.I dated 4.6.04 immediately and Sh B.B.Prusty, WA be retained at Bhubaneswar”.

4. It is in compliance of the above direction of the Director General, of Labour Welfare at New Delhi, the Welfare Commissioner, of Labour Welfare Organisation, at Bhubaneswar had issued an order dated 22.11.2004 (Annexure-5) requiring the applicant to report as Assistant Welfare Commissioner, at Barbil (in terms of Ministry's Office Order No.A38013/2/03-W.I dated 4.6.2006)

5. By filing the Original Application, the Applicant wants is to reopen the matter ( which was already agitated in this Tribunal/in O.A.NO.254/04) once again.



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6. We would like to note here that in the earlier round of litigation, this Tribunal left no stone unturned to deal with the merit of the matter relating to transfer of the applicant. Incidentally it may be mentioned here that in Para 4 of the order dated 20.8.2004 (rendered in O.A.NO.254/04) it was observed by this Tribunal as under:

“... We however, would like to observe that after going through the relevant note-sheet of the file in which the request for transfer from Allahabad to Bhubaneswar in respect of the applicant was considered, the Director General, Labour Welfare had ordered his transfer to Barbil. As the order of transfer is to Barbil, in case the D.G.(Labour Welfare) on reconsideration of the matter (as observed above) would like to stick on his earlier decision, it would not be correct to deny him TA/DA, joining time etc., because his request for transfer is to Bhubaneswar and not to Barbil”.

7. In the present O.A. the Applicant has challenged the order under Annexure-4 dated 22.9.2004 (passed by the Respondents in disposing of his representation) on very many grounds as formed the part of record in the earlier round of litigation. Besides, he has shown a comparative assessment of personal difficulties between him and the Res. No.4, who has been ordered to be retained at Bhubaneswar.

8. In a matter of transfer, the scope of interference by this Tribunal is very limited. The Tribunal or the Court can only interfere with the order of transfer if it is made in flagrant violation of statutory/ mandatory rules or has

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been issued mala fide. In the instant case, the applicant has not made out any such case. This Tribunal, being not an appellate authority, is precluded to sit over the decision taken by the competent authority in the matter of transfer; especially when the Applicant is holding a post having all India transfer liability.

9. It is the settled position of law as enunciated by the Hon'ble Supreme Court of India in the case of AMBANI KANTA RAY VS. STATE OF ORISSA (reported in 1995 (Suppl.) 4 SCC 169, that transfer, which is an incidence of service, is not to be interfered with by the Court unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer. In the case of UNION OF INDIA VS. S.L.ABBAS (reported in AIR 1993 SC 2444), it has been held by the Hon'ble Apex Court that unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the Court cannot interfere with it. "Who should be transferred and where one should be posted" is a matter for the administrative authority to decide. In the case of UNION OF INDIA AND ORS. VS. V.JANARDAN DEBANATH AND ANOTHER (reported in (2004)4 SCC 245 their Lordships of the Hon'ble Supreme Court have held as under :

"No Government servant or employee of a public undertaking has any legal right to be posted for

ever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authority substituting their own decision for that of the employer/management, as against such order passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corp. Ltd. Vs. Shri Bhagwan (2001) 8 SCC 574.”

10. In view of what has been discussed above, there being no substantial right of the applicant to claim to be posted at a particular place of his choice, this O.A. is dismissed. No costs.

  
(M.R.MOHANTY)  
MEMBER(JUDICIAL)

29/04/05