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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No. 865 of 2004.

Cuttack, this the 3rd day of February, 2006.

BIJAYA KUMAR NAYAK.

APPLICANT.

VERSUS

UNION OF INDIA & ORS

RESPONDENTS.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not? Yes.
2. Whether it be circulated to all the Benches of CAT or not? Yes.

(M.R.MOHANTY)
MEMBER (JUDICIAL)
03/02/06

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK.**

O.A.NOS. 865 of 2004.

Cuttack, this the 3rd day of February, 2006.

C O R A M:-

THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDICIAL)

Bijaya Kumar Nayak, Aged about 41 years,
S/o. Sri Bhagaban Nayak,
Presently working as Driver,
Doordarshan Kendra,
At/PO/PS/DIST.: Sambalpur.

..... **APPLICANT.**

By legal practitioner:- Mr.P.C.Chinchani, Advocate

-VERSUS-

1. Union of India, represented through its Director General,
Doordarshan Prasar Bharati(Broad Casting Corporation of India)
Mandi House, Copernicus Marg, New Delhi-110 001.
2. The Director, Doordarshan Kendra,
Prasar Bharati (Broad Casting Corporation of India)
Bhubaneswar-5, Dist.Khurda.
3. The Station Engineer, High Power Transmitter(HPT),
Doordarshan, Tulasipur, Cuttack-8.
4. Station Director, Doordarshan Kendra,
At/Po/Dist.: Sambalpur.

[Signature]

5. Satrughana Sahoo, Driver, Doordarshan Kendra, Bhubaneswar-5, Dist. Khurda.

..... RESPONDENTS.

By legal practitioner:- Mr. S.B.Jena, Additional Standing Counsel (Central).

ORDER

MR.M.R.MOHANTY, MEMBER(JUDICIAL):-

Applicant (a Motor Vehicle Driver of HPT Cuttack) having faced an order dated 30-01-2003 transferring him to DDK Sambalpur, submitted a representation on 11-02-2003. During pendency of the said representation, the Applicant relieved from his duty at Cuttack (on 31-10-2003) to join at the new place of posting; where he joined.

The Applicant was also noticed, on 08.07.2003, to vacate the official accommodation (allotted in his favour, while he was at HPT, Cuttack) and in the said premises, he preferred a representation (on 25-07-2003) explaining his difficulties. Therein he specifically prayed (to the Respondents) to allow him to retain the quarters at HPT/ DDK at Cuttack till end of the academic session; for his children were prosecuting their studies at Cuttack. Without considering his grievance, the Applicant was asked to pay higher license fee (i.e. double the normal license fee amounting to Rs. 234/- per month for the month of May and June, 2003 and four times the



normal license fee amounting to Rs. 268/- per month for July and August, 2003) vide order dated 01-09-2003.

He approached this Tribunal in Original Application No. 647 of 2003. In the said Original Application, it was the specific case of the Applicant that as his grievance (as raised in his representation dated 11-02-2003 pertaining to the order of his transfer and posting in DDK/ Sambalpur) were pending, the Respondents ought to have gone slow in the matter of asking the Applicant to vacate the quarters or in the matter of asking the Applicant to pay the higher rate of license fee of the quarters.

Prima facie case having been found in favour of the Applicant, this Tribunal in its order dated 01-07-2004, without expressing any opinion on the merit of the matter disposed of the said Original Application by calling upon the Respondents to consider and dispose of the pending grievances of the Applicant within a period of thirty days from the date of receipt of a copy of the order and to accept license fees (at the normal rate/not at enhanced rate) from the Applicant till final redressal of his grievances. In compliance of the said directions of this Tribunal, the Respondents considered the representation of the Applicant and passed an order dated 04-08-2004 to the following effect:-

“With reference to his representation dated 25-07-2003, requesting to retain the

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staff quarter at HPT, Doordarshan, Cuttack ~~at the end of the academic session 2003-2004~~ for the education of his children who are continuing their studies at Cuttack, Shri B.K.Nayak, Motor Driver is aware that the academic session has already been completed with effect from 31-05-2005 and according to his own commitment he should have vacated the staff quarter at Cuttack on 01-06-2004 as a staff member is waiting for allotment of the said quarter.

The rules quoted by Shri Nayak in para 4 of his representation does not qualify him to retain the quarter for an unlimited period.

In obedience to the order dated 01-07-2004 passed by Honourable Central Administrative Tribunal, Cuttack in OA No. 647/2003 normal license fee being recovered from his salary.

Shri B.K.Nayak, Motor Driver is hereby advised to vacate the staff quarter at HPT, Doordarshan, Cuttack at 15th of August, 2004 positively as per his own commitment in his representation.

He should note that continuance in the staff quarter at Cuttack beyond 15-08-2004 will be treated as illegal and unauthorized occupation and action will be taken to vacate the quarter as per rules in force".

Applicant again made a representation, on 13.08.2004, requesting to allow him to retain the official accommodation at Cuttack. In Memorandum dated 01.11.2004, the Station Engineer, disposed of the representation of the Applicant by stating therein that it is not feasible to allow him to retain the quarters at Cuttack permanently. By order dated 30-

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08-2004, the Respondents rejected the request of the Applicant to transfer him back to Cuttack. When the grievance of Applicant (to transfer him back to Cuttack) was pending for consideration, another Driver Grade I, (Shri Satrughna Sahoo), was transferred and posted at DDMC/Dhenkanal by an order that was passed on 18-08-2004.

The Applicant, who was instructed to vacate the quarters by 15.11.2004 (under the threat of action through civil authority) without any further communication. The grievance of the Applicant for retention of quarters, on medical ground, was again turned down by an order dated 14-02-2005/01-03-2005 on the ground that there was no documentary evidence in support of the illness of his wife. In the said premises, the Applicant again made a representation, on 03.08.2005, reiterating his prayer for transferring him back either to DDMC/ Dhenkanal or DDK/Bhubaneswar. He enclosed therewith medical certificate in support of the illness of his wife. He, again, preferred a representation (under Annexure-A/16 dated 07-03-2005) and simultaneously made second journey to this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 with prayers (a) to quash the impugned orders of rejection under Annexures-A/6, A/9, A/10, A/13 and A/15 (b) to direct the Respondents to transfer him back either to DDMC,

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Dhenkanal or DDK, Cuttack and (c) to direct the Respondents to allow the Applicant to retain the quarters till a just and proper decision is taken on reconsideration of his representation at Annexure-A/14 .

2. The factual aspects of the matter are not in dispute. However, the Respondents have stated that there is no unjust, unfair, arbitrary or mala fide in rejecting the case of the Applicant. It has been stated that the transfer of the Applicant from HPT/Cuttack to DDK/Sambalpur was necessitated as there was no work for the Applicant due to condemnation of the Vehicles and idle payment of wages as pointed out by the audit.

Respondents have pointed out that, as per the normal rule, a staff can retain department quarters for a period of two months after the date of relieve on transfer. Therefore, the Applicant is liable to pay the higher charges as per the Rules.

As regards transfer of Respondent No.5 to DDMC/Dhenkanal, it was pointed out by the Respondent Department that as against 4 departmental vehicles 7 drivers were in position in the DDK/Bhubaneswar; for which, in compliance of the audit objection, the Respondent No.5 was transferred from Doordarshan Kendra at Bhubaneswar to DDMC at Dhenkanal.



It has also been submitted by the Respondents that as there is no need of any driver either at DDMC/Cuttack or DDK/Bhubaneswar, the grievance of Applicant was rightly rejected; which needs no interference of this Tribunal.

3. Applicant has filed a rejoinder to the counter filed by the Respondent-Department; which has been taken note of.

4. Learned counsel appearing for the Applicant has submitted that the as the Applicant is a low paid employee of the Doordarshan Organisation, he should not have been sent to such a distance place and that, as his children are continuing their studies at Cuttack and his wife is under treatment at SCB Medical College at Cuttack, non consideration of his grievance to keep the quarters (till he is accommodated at his old station or at Bhubaneswar) and ultimate imposition of higher license fee can not be said to be a healthy personal management and, therefore, the Respondents/Authorities ought to be directed to bring the Applicant back either to Bhubaneswar or DDMC/Cuttack and, till then, the Applicant should be permitted to keep the quarters at Cuttack with the normal license fee.

On the other hand, learned counsel appearing for the Respondent Department has submitted that the Applicant is estopped to claim continuance at a particular station at his own choice and it is for the

authorities to decide who should be posted where and at what point of time. It has been submitted, on behalf of the Respondents, that Applicant has not been transferred and posted to DDK/Sambalpur by way of harassment and that he was posted there (at Sambalpur) by taking into consideration the administrative need and that, in a compelling administrative circumstances, the impugned transfer order was passed; which cannot be said to be a faulty decision of the authorities. It has also been submitted that there is no post available either at DDK/Bhubaneswar or at DDMC/Cuttack/Dhenkanal.

As regards allowing the Applicant to continue to hold the quarters at Cuttack, it has been submitted by him that, as per the Rules, the Applicant is entitled to retain the quarters for two months from the date of relieve; whereas the Respondents, considering the difficulties of Applicant, allowed him to retain the quarters till the end of academic session of 2003-2004 on payment of normal license fee and in order to cater the need of other employees, eligible to get the quarters, are waiting for allotment, the Applicant was asked repeatedly to vacate the quarters. It has been stated that the Applicant has no indefeasible right either to continue at one place or to keep the quarters for eternity. As regards illness of his wife, it has been submitted by the learned counsel appearing for the Respondent-Department that as one of the College & Hospital (i.e. VSS Medical College & Hospital) 

is available at the new place of posting of Applicant, it can not be said that, in the event of shifting of the family, the wife of the Applicant will be deprived of any medical treatment. In the above backdrop, the Respondents' counsel has vehemently opposed the prayers of the Applicant.

5. After giving anxious thought to various submissions made by the parties, it to be recorded that law in the matter of transfer is no more res **integra** and it has been held by the Hon'ble Apex Court in the case of **Shilpi Bose vrs. State of Bihar**, (reported in *AIR 1991 SC 532*) that where a competent authority issues transfer order with a view to accommodate a public servant the same cannot be interfered with by the court. In the case of **Union of India vrs. H.N. Kirtania** (reported in *1989 (3) SCC 445*), and in the case of **Gujurat Electricity Board vrs. Atmaram Sungomall Pashani** (reported in *AIR 1989 SC 1433*) it has been held that transfer of an officer holding a transferable post cannot be objected to and that Government is the best judge to decide to distribute and utilize the services of an employee. In the case of **State of Orissa vrs. Kishore Chandra Samal** (reported in *1992 (2) Scale-251*), it has been held that transfer (within the cadre with identical responsibilities) no objection can be made. In the case of **Union of India vrs. S.L. Abbas** (reported in *AIR 1993 SC 2444*) it has been held that "who should be transferred where" is a matter for the appropriate authority to

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decide. In the case of **State of Madhya Pradesh vrs. S.S.Kourav** (reported in *AIR 1995 SC 1056*) it has been held that courts or Tribunals are not the Appellate Authority to decide the question of transfer of officers made on administrative grounds. The wheels of the administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict/interfere with the working of the administration. In the case of **Union of India vrs. N.P.Thomas** (reported in *AIR 1993 SC 1605*) it has been held that, if the transfer is not in violation of any statutory rule, no vested right accrued to an employee to claim to continue in one place for eternity.

In view of these legal provisions, there are no substance in the submissions of the Applicant against his transfer and posting to DDK/Bhubaneswar.

However, this matter is left to the Respondents/Authorities to decide, if the public interest so demands, without being biased on the previous rejection of the prayer of the Applicant in this regard.

6. As regards the prayer to allow the Applicant to continue in occupation in the quarters at Cuttack, with the normal license fee, it is to be recorded that quarters are meant for occupation of the existing employees of a particular stations. Duties of Driver is essential in nature and the driver is supposed to be available in the headquarters round the clock. It is not the

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case of the Applicant that there are surplus quarters available in the station/Cuttack nor it is the case of the Applicant that any such employee, after being transferred, are still in occupation of quarters. Rather it has been specifically mentioned by the Respondents that employees are waiting for allotment of quarters. Experience also goes to show that in the absence of Govt. accommodation many Government of India employees are residing (at Cuttack) in privately arranged tenanted houses. Rule is also very clear that an employee is entitled to keep a quarters allotted to him/her for two months only after his/hr transfer. It is seen that on the prayer of the Applicant (as his children are prosecuting their studies at Cuttack) he was allowed to remain in the quarters at Cuttack till the end of the academic session/2003-04 and the competent authority, by using his discretionary power and magnanimity, allowed the Applicant to remain in occupation of the said quarters till 31-05-2004 on payment of normal license fee.

It now reveals that, instead of vacating the quarters (as per his own promises), the Applicant has been making requests to remain in occupation of the said quarters on some plea or the other; which is not at all congenial both for employer and employee.

Therefore, the action of the Respondents (in asking to vacate the quarters and in imposing the higher license fee) can not be faulted.

However, the Applicant, being a low paid employee, is continuing to occupy the quarters with bona fie impression that he may be transferred back to nearby places and, in the said premises, the Respondents should do well in exempting the Applicant from payment of any extra charges (than the minimum, which he has been paying for the quarters); for which the Applicant should given an undertaking to vacate the quarters at the end of the current academic session of 2005-06.

7. In the result, with the aforesaid observations and directions, this Original Application stands disposed of; by leaving the parties to bear their own costs.


03/02/2006
(M.R.MOHANTY)
MEMBER(JUDICIAL)