

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

ORIGINAL APPLICATION NO. 88 OF 2005

CUTTACK, this the 11th August, 2006.

SHRI PRAKASH CH. PANDA. APPLICANT
Versus
UNION OF INDIA & ORS. RESPONDENTS

(FOR INSTRUCTIONS)

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

(B.B.MISHRA)
MEMBER (ADMN.)



CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 88 of 2005

Cuttack, this the 11th day of August, 2006.

C O R A M:-

THE HON'BLE MR.B.B.MISHRA, MEMBER(ADMN.)

PRAKASH CH. PANDA, Aged about 47 years, Son of Shri Jawaharlal Panda, At/Po: Charabahal, Dist. Kalahandi, at present Pharmacist Gr. III, Construction Health Unit, East Coast Railway, Chnddrasekhpur, At/Po: Chandrasekhpur, Bhubaneswar, Dist. Khurda.

.... APPLICANTS.

BY legal practitioner: **Ms. R.Bahal**, Advocates.

-VERSUS-

1. Union of India, represented through its General Railway Manager, East Coast Railway, Chandrasekhpur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager, Khurda Road, East Coast Railway, Jatni, At/Post: Jatni, Dist. Khurda.
3. Divisional Medical Officer (Construction), East Coast Railway, Chandrasekhpur, Bhubaneswar.
4. Medical Superintendent, East Coast Railway, Khurda Road, Jatni, At/Po: Jatni, Dist. Khurda.
5. Shri P.K.Roul, Pharmacist Gr.III, RTN Health Unit Jatni, At/Po: Jatni, Dist. Khurda.

..... RESPONDENTS

By legal practitioner **Mr.T.Rath**, Counsel.

ORDER

MR.B.B.MISHRA, MEMBER(ADMINISTRATIVE)

Applicant a Pharmacist Gr.III of the Health Unit of East Coast Railway stationed at Chandrasekharpur, Bhubaneswar having faced the order of transfer to the Health Unit of Retang Colony, Khurda Road under Annexure-A/1 dated 29-12-2004 & A/2 dated 05-01-2005 carried the matter in appeal before the Respondent No.3, under Annexure-A/6 dated 07-01-2005 and without allowing breathing time, had approached this Tribunal in OA No. 5 of 2005 seeking cancellation of the said order of transfer on the grounds that he being a cardiac patient is now under treatment at Kalinga Hospital, Bhubaneswar and in case he is posted out, he can not get the support of the doctors available at Kalinga Hospital. Secondly only to accommodate another employee at the place of Applicant he has been picked up which is per se illegal, arbitrary and malafide and therefore, he had prayed for quashing of the impugned order of his transfer. This Tribunal in its order dated 11-01-2005 disposed of the aforesaid Original Application with the following observations:-

“From the above chronology of facts, it would appear that the applicant has rushed to this Tribunal without exhausting the Departmental remedies. In the circumstances, this OA ipso facto is not maintainable. However, the Respondents are directed to dispose of the representation dated 7-1-2005 filed by the applicant and until the said representation is disposed of, the applicant may be allowed to be pharmacist in the waiting at Mancheswar.

2. The appeal of the Applicant having been rejected under Annexure-A/8 dated 02-02-2005, he has approached this Tribunal in this second round of litigation under section 19 of the Administrative Tribunals Act, 1985 with the following relief:-

- “(i) Quash the order of transfer under Annexure-A/1 and A/2 and order of rejection under Annexure-A/8;
- “(ii) Direct the Respondents to allow the applicant to continue at Head-quarters of East Coast Railway Chandrasekharpur, Bhubaneswar.”

3. Respondents have filed their counter stating therein that the Applicant came on transfer from Rail Coach Factory, Kapurthala on his own request accepting bottom seniority to S.E. Railway and he was ordered therein to work in the Construction Health Unit of Chandrasekharpur, Bhubaneswar against temporary work charge post. The Respondents while

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denying the contention of the Applicant that while acceding the request of the Applicant, he was specifically allotted to HQs have submitted that the Applicant was brought to Eco. Railways which consists of three Divisions; among those Khurda Road Division is one. He was working as Pharmacist within the geographical jurisdiction of Khurda Road Division at Health Unit/Chandrasekhpur. Thereafter, he was transferred to Khurda Road on the same scale and capacity to work under CMP/Health Unit, Retang Colony/Khurda Road and the cadre was also de-centralized prior to filing of this OA. It has been submitted that the seniority of the Applicant cannot be disturbed by the present transfer of Applicant there being one common gradation list of the Pharmacists in three Health Units. As regards the treatment of the Applicant it has been submitted that Angiogram Test conducted in Kanlinga Hospital and Perambur Railway Hospital was found to be normal and the Applicant is not suffering from any serious cardiac problem. It has been submitted that many Cardiac patients are staying at Khurda and Khurda Divisional Hospital is well equipped with for treating any emergency including Cardiac problems and all

Specialists are available at Khurda. As regards education of the children of the Applicant, it has been submitted by the Respondents that the Applicant's children are reading in Kendriya Vidyalaya Bhubaneswar which facility is also available at Khurda. On the above grounds the Respondents have opposed the prayer of the Applicant.

4. Applicant has filed rejoinder more or less reiterating the stand taken in the Original Application.

5. Learned Counsel Ms. R .Bahal, appearing for the Applicant has submitted that since the Applicant was specifically allotted to work in the Health Unit of E Co Railway HQs and CSPur, Bhubaneswar being the Health Unit Headquarters of the E.Co. Railway, he is not liable to be transferred. On the other hand, Mr. T.Rath, Learned Counsel appearing for the Respondents has submitted that this argument of the Applicant is not based on record. He has submitted that CSPur is one of the Health Units of E.Co. Railways. He has further submitted that there is no rule to the effect that one cannot be transferred from the HQs Health Unit.

6. Matter for examination is the jurisdiction of the Courts/Tribunal in the cases of transfer of employees from one station to another. Nowhere in the pleadings the Applicant has adduced evidence to prove that the present order of transfer is malafide one. The only point that has been canvassed in this case is that the Applicant is not liable to be transferred which has been contested by the Respondents by stating in the Counter that CSPur being not the headquarters of the three Health Units of the E.Co. Railways, there is no wrong in the order of transfer.

7. In a matter of transfer, the scope of interference by Tribunal(s) has been generalized by the Hon'ble Apex Court in various cases which are quoted herein below:

A. Mrs. Shilpi Bose and others VRS State of Bihar and others-AIR 1991 SC 532 it has been observed as under:

“We fail to appreciate the reasoning recorded by the High Court. If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the court merely because the transfer order were passed on the request of the employee concerned...”

“In our opinion, the courts should not interfere with a transfer

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order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest”

(emphasis supplied)

B. Union of India and another vrs. N.P. Thomas-AIR 1993 SC 1605 it has been observed as under:

“In the present case, it cannot be said that the transfer order of the respondent transferring him out of Kerala Circle is violative of any statutory rule or that the transfer order suffers on the ground of mala fide. The submissions of the respondent that some of his juniors are retained by Kerala Circle and that his transfer is against the policy of

the Government posting the husband and wife in the same station as far as possible cannot be countenanced since the respondent holding a transferable post and no vested right to remain in the Kerala Circle itself and cannot claim, as a matter of right, the posting in that Circle even on promotion.

..... For all the aforementioned reasons, we hold that the Tribunal was not justified in quashing the order of transfer of the Respondent and accordingly, we set aside the order of the Tribunal".

(emphasis supplied)

C. Union of India vrs. S.L.Abas –AIR 1993 sc 2444 it has been observed as under:

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right".

D. Sate of Madhya Pradesh vrs. Shri Arjun Singh – AIR 1993 SC 1239 it has been observed as under:

“...It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequence and personal difficulties are matters for consideration of the Department”.

(emphasis supplied)

E. Abani Kanta Ray vrs. State of Orissa - 1995 (Suppl.) 4 SCC 169 it has been held 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.

(emphasis supplied)

F. Union of India and others Vrs. V.Janardan Debanath and another - (2004)4 SCC 245 it has been observed 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 Corpn. Ltd. Vs. Shri Bhagwan (2001) 8 SCC 574."

(emphasis supplied)

F. Union of India vrs. H.N.Kirtania (1989 (3) SCC 445), & in the case of Gujarat Electricity Board vrs. Atmaram Sungomall Pashani - AIR 1989 SC 1433 it has been observed that transfer of an officer holding a transferable post cannot be objected to. Government is the best judge to decide to distribute and utilize the services of an employee.

(emphasis supplied)

G. State of Orissa vrs. Kishore Chandra Samal 1992 (2) Scale page-251 it has been held that the transfer within the cadre with identical responsibilities no objection can be made by the employee against the order of transfer;

(emphasis supplied)



H. H.State of Madhya Pradesh vrs.

S.S.Kourav- AIR 1995 SC 1056 it has been observed that courts or Tribunals is not the Appellate Authority to decide on transfer of the officers 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 the working of the administration system.

(emphasis supplied)

I. Union of India vrs. N.P.Thomas- AIR

1993 SC 1605 it has been observed that if the transfer is not in violation of any statutory rule no vested right to employee to continue in his original post.

J. State of UP & Others vrs. Gobardhan Lal

& D.B.Singh vrs. D.K.Shukla and others - 2005 SCC (L&S)55 it has been held as under:

“7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative

guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fide or is made in violation of any statutory provision."

"8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the Administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration bore out of conjectures or surmises and except for strong and convincing reasons, no interference could

ordinarily be made with an order of transfer".

(emphasis supplied)

K. State of U.P. & Ors. Vrs. Siya Ram & Anr-2005(1) AISLJ 54 it has been 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 other 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 malafide 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 Authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this court in National Hydroelectric Power Corporation Ltd. vrs. Shri Bhagwan and Anr -2001(8) SCC 574=2002(1) SLJ 86 (SC)".

(emphasis supplied)

L. Dr. N.S.Srikanta Sastry vrs. Secretary, Deptt. of Health & Family Welfare Services -2005(1)ATJ331 it has been held by the Karnataka High Court as under:

"5. A Government Servant, who fails to obey a transfer order, without

sufficient and justifiable cause is liable to be disciplined. It must be borne in mind by all public servants, particularly those who deal with essential services that even a day's absence by them causes immense inconvenience to the general public."

8. The Applicant has been transferred in public interest/administrative exigencies. It is also the admitted fact that pursuant to the order of transfer, the Applicant has already joined in his new place of posting. In this case I also find there is no violation of any of the Rules; nor the Applicant has been able to prove that the order of transfer is the out come of malice. In view of the settled position of law that Tribunal is not an appellate authority to sit over the decision of the Government in the matter of transfer, this Original Application is dismissed by leaving the parties to bear their own costs.

B.B.Mishra
(B.B.MISHRA)
MEMBER(ADMN.)