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O.A.NO. 208 OF 2005.

ORDER No.1, dated 21.08.2006.

The Applicant Shri B.K. Samal, Assistant Provident Fund Commissioner, Office of the Regional Provident Fund Commissioner, Bhubaneswar has come up in this Original Application under section 19 of the Administrative Tribunals Act, 1985 with the grievance against the orders dated 17-05-2005 (Annexure-A/3) passed by Respondent No.2 and dated 20-05-2005 (Annexure-A/5) passed by the Respondent No.3.

2. By order dated 17.05.2005 (Annexure-A/3), the Regional Provident Fund Commissioner (HRM) transferred and posted the Applicant from Bhubaneswar to Barrackpore on "administrative grounds". The Respondent No.3 by his order under Annexure A/5 dated 20-05-2005 seeks to relieve the Applicant in the afternoon of 24-05-2005 with an advice to report at his new place of posting without availing himself of joining time and with further direction that "no representation for retention or change of posting will be entertained in

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administrative interests". The Applicant has challenged the order of transfer/posting calling it contrary to the transfer policy/guidelines of Gr. 'A' officers issued by the Respondents Department vide its order dated 4<sup>th</sup> March, 2004 under Annexure-A/4. In the said order, it has been provided in para-IV "special consideration for officers on the verge of superannuation" that "officers with less than three years of service should be retained in their home station or station where they choose to retire from, in order to facilitate post superannuation settling down.". The case of the Applicant is that he has already expressed his intention of settling down at Bhubaneswar and it was only on 30-05-2002, he was transferred from Kolkata to Rourkela and then to Bhubaneswar.

3. He is also aggrieved by the order passed by the Respondent No.3 at Annexure-A/5; wherein his fundamental rights for filing of representation for retention ,according to the transfer policy guidelines of the Department has been sought to be withheld by the RPFC,(Admn.), Orissa. On these grounds, he has prayed

for quashing those orders and by way of interim relief, has sought for staying the operation of these orders till the final disposal of this Original Application.

4. Respondents have filed their counter stating that it is a fact that the Applicant is due to retire in June, 2007 which is less than three years yet his transfer was necessitated due to investigation into some vigilance cases. They have also stated that no doubt transfer guidelines provide for continuance in a particular place for a fixed period, yet it also empowers the Chairman, Central Board of Trustees, EPF to transfer an officer even before completion of tenure at a particular place of posting in administrative interest. It has been stated that the transfer order of the Applicant from Regional Office, Bhubaneswar to Sub Regional Office, Barrackpore has been issued after careful examination of the relevant facts and also keeping in view the large public interest after the approval of the competent authority. It has further been submitted that since Criminal/CBI case u/s7 of the PC Act is under investigation and frequent visits of the

Applicant to Kolkata is not only a burden on the exchequer by way of payment of TA/DA, his frequent absence in connection with Vigilance/Crl. cases also creates dislocation in the day to day functioning of the administration. They have, therefore, submitted that since the Applicant is an officer having all India transfer liability, and the order of transfer being made in administrative exigencies, the same needs no interference.

5. Heard Mr. K.C.Kanungo, Learned Counsel appearing for the Applicant and Mr. S.S. Mohanty, Learned Counsel appearing for the Respondents. Learned Counsel for the Applicant, by drawing my attention to the transfer policy guidelines issued by the Employees' Provident Fund Organization, Ministry of Labour, Government of India No. HRM-I/T-4 (I) 2000 dated 4<sup>th</sup> March, 2004 has stated that the Applicant has neither completed his tenure; nor has he been given the benefit as promised to all the officers of the department those who are on the verge of superannuation for being

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retained in their home stations. In support of his contention that the order of transfer is malafide one, he has drawn my attention to the prohibition made by the Respondents restricting the Applicant to make any representation in regard to his transfer. In support of this he has submitted that by the submissions made by the Respondents, it is now clear that the Applicant has been transferred from his present place of posting not because of any administrative interest but for some other reasons in gross violation of the transfer guidelines issued by the Respondents and, as such, as per the decisions of the Apex Court, the same is liable to be set aside. In support of the plea that the order of transfer has been made malafide, Learned Counsel appearing for the applicant has taken me through some of the averments made in the counter filed by the Respondents and has pinpointed that since the order has been passed bereft of the administrative exigencies, the same is liable to be quashed. It has been submitted by him that order of transfer passed for any other grounds except the public

interest/administrative exigencies in violation of the transfer guidelines is deemed to be malafide and, therefore, is liable to be set aside. It also submitted by him that since in the present case the Applicant has only less than two years service to retire on attaining the age of superannuation, and as he wants to settle down at Bhubaneswar, at this stage he should not be disturbed from his present place of posting. Per contra, learned Counsel appearing for the Respondents have submitted that even if the transfer has been made in gross violation of the transfer guidelines framed by the Government, the same is not liable to be quashed. In this connection he has also taken me through various judge -made -laws of the Hon'ble Apex Court as well as this Tribunal. He has also submitted that to facilitate the Applicant to take part in the vigilance case he has been transferred to Barrackpore which cannot be said to be not in public interest. He has also submitted that while deviating from the principles set apart in the transfer guidelines, approval of the competent authority was not taken. Apart

from the above, he has reiterated the other stand taken in the counter in support of the impugned order of transfer which is the subject matter of challenge in this OA.

6. Having heard the various submissions of the parties, I may record that powers of the Courts/Tribunals in the matter is no more res-integra. As per the rulings of the Supreme Court, interference in the matter of transfer is possible only where it is proved that the said order of transfer has been made in gross violation of the Statutory Rules or with mala fide exercise of power and/or is made by an authority who is not competent to do so. Now it is not disputed that the Applicant is holding a post having All India transfer liability. In the counter it has been clarified by the respondents that the competent authority has approved the order of transfer of the Applicant. Therefore, now it is to be examined as to whether there is real administrative exigencies existing for the transfer of the Applicant or the same has been made with oblique motive. When the plea of malafide is offered the duty of proving the same has to satisfactorily discharged by the

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person making such allegation. But the submissions made and materials placed failed to establish beyond doubt. I may record that certain circumstances do create suspicion but suspicion cannot take the place of proof and, as pointed out above, proof needed here is high degree of proof. It cannot be said that evidence generating judicial certitude in upholding the plea of mala fides has been placed before me in the present case.

The authorities are well within their competence to decide who should be transferred where and at what point of time. If the transfer is made to save the exchequer from the monetary burden and for smooth/impartial adjudication of the vigilance case, it cannot be said that the order of transfer is in any way mala fide exercise of power.

7. In this view of the matter, Applicant having failed to establish that the order of transfer has been made with mala fide exercise of power, applying the ratio of the decisions of the Apex Court rendered in the cases of **MRS.SHILPI BOSE AND OTHERS vrs.**

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STATE OF BIHAR AND OTHERS-AIR 1991 SC 532;

UNION OF INDIA vrs. N.P.THOMAS-AIR 1993 SC 1605; UNION OF INDIA vrs. S.L.ABAS -AIR 1993 SC 2444; STATE OF MADHYA PRADESH vrs. SHRI ARJUN SINGH – AIR 1993 SC 1239 ;ABANI KANTA RAY vrs. STATE OF ORISSA - 1995 (Suppl.) 4 SCC 169; UNION OF INDIA AND OTHERS vrs. V.JANARDAN DEBANATH AND ANOTHER - (2004)4 SCC 245; National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan (2001) 8 SCC 574; UNION OF INDIA vrs. H.N.KIRTANIA- ( 1989 (3) SCC 445); STATE OF ORISSA vrs. KISHORE CHANDRA SAMAL- 1992 (2) Scale page- 251; H.STATE OF MADHYA PRADESH vrs. S.S.KOURAV- AIR 1995 SC 1056; STATE OF UP & OTHERS vrs. GOBARDHAN LAL AND D.B.SINGH vrs. D.K.SHUKLA AND OTHERS -2005 SCC (L&S)55; STATE OF U.P. & ORS. Vrs. SIVA RAM & ANR-2005(l) AISLJ 54; DR. N.S.SRIKANTA vrs. SECRETARY, DEPARTMENT OF HEALTH

AND FAMILY WELFARE SERVICES -2005(1)ATJ

331, I refrain from interfering with the order of transfer.

8. However, the Applicant passionately pleads that since he is at the fag end of his career (date of retirement June, 2007) and intends to make post retirement settlement at Bhubaneswar, his case needs to be considered from that point of view. But this is a matter not to be adjudicated by this Tribunal and it is for the Respondents to consider. It was stated by the Learned Counsel appearing for the Respondents that the Applicant has never made such plea before the Authorities hence it is inappropriate to make such plea at this stage.

Considering the submissions it is made clear that it is open to the Applicant to file representation before the Respondent(s) highlighting his personal difficulties and it is for the Respondents to decide his case examining his plea of personal difficulties and administrative necessity.

*SP*  
9. In the result, with the observations made above, this Original Application stands disposed of. No costs.

*B.B.M*  
(B.B.MISHRA)  
MEMBER(ADMN.)