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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.568 OF 2005
CUTTACK THIS THE 16th DAY OF FEB/2006

S.K.MISHRA ...APPLICANT(S)
-VERSUS-
UNION OF INDIA & ORS. ...RESPONDENT(S)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? y
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? y


(N.RAMAKRISHNAN)
MEMBER(ADMINISTRATIVE)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO. 568 OF 2005
CUTTACK THIS THE 16th DAY OF FEB. 2006**

CORAM:

THE HON'BLE MR. N.RAMAKRISHNAN, MEMBER(ADMINISTRATIVE)

...
Sangram Keshari Mishra, I.A.S., aged about 46
years, S/o. late Dr.G.C.Mishra, at present serving as
Commissioner, Consolidation and Settlement, Orissa,
Bhubaneswar, Dist-Khurda

...Applicant

By the Advocates :
M/s.S.Mohapatra

P.K.Panda
G.C.Swain

-Vs.-

1. Union of India represented through the
Secretary, Personnel and Training Department,
North Block, New Delhi
2. State of Orissa represented through the Chief
Secretary, Secretariat Building, New Capital)
Bhubaneswar, Dist-Khurda
3. Special Secretary to Govt. of Orissa, General
Administration Deptt. Secretariat Building,
New Capital, Bhubaneswar, Khurda



...Respondents

By the Advocates :

Mr.U.B.Mohapatra(R.1)

Mr.A.N.Routray (R. 2 & 3)

...
ORDER

MR.N.RAMAKRISHNAN, MEMBER(ADMN.):

The applicant in this case, Shri S.K.Mishra, I.A.S., seeks to get his posting order quashed.

2.The facts of the case are that the applicant was working as Commissioner, Consolidation and Settlement from 23.9.2004. Vide impugned Annexure-A/2 (order the Government of Orissa, G.A.D. Notification dated 3rd June, 2005 (No.AIS/IV-01/2005 (Pt.) – 16613/AIS.I), he was appointed as Managing Director, Orissa ST/SC Development Finance Cooperative Corporation (Corporation for short) Bhubaneswar. Aggrieved by the said order, and contesting the same on various grounds, he filed this O.A. He also prayed for interim stay on the order on grounds of premature disturbance. The same was granted with liberty granted to the Respondents to move petition for modification/variation. When the same was done, this Tribunal heard the relevant Misc.Application and found no reason to further extend the stay of the operation of the impugned A/2 order and an order was passed to that effect on 3.10.2005. The applicant



9 moved the Hon'ble High Court of Orissa in Writ Petition (C) 12602 of 2005 against such non extension of the stay. The Hon'ble High Court disposed of the Writ Petition with a direction to the C.A.T. to consider the O.A. at an early date; preferably within a period of one month from the date of receipt of the order which was passed on 3.1.2006. Accordingly, the case was posted for hearing on 14.2.2006.

3.The applicant seeks the remedy of quashing Annexure-A/2 order. The grounds of the application are (i) the order of transfer is an outcome of malice, (ii) acceptance of the post and joining therein would lead to his working under his junior and the posting was illegal and (iii) the laid down procedure for appointment has not been followed in this case.

4.Respondents oppose the application on the following grounds:

- (i) The transfer of the applicant has not been made out of any malice alleged.
- (ii) Subsequent to the impugned order, certain changes have been ordered in the hierarchy of the Corporation with an officer of the 1973 seniority having been appointed as Chairman. Thus, the applicant does no longer have to report to any junior officer.



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- (iii) The prerogative to post the officials to any position rests with the Government.
- (iv) The Corporation is fully controlled by the State Government and the latter is fully competent to appoint officials as the M.D.
- (v) In pursuance of Annexure-R-2/6, the Government have been issuing notifications on appointment of officers and the administrative departments concerned need not issue further notification.
- (vi) There has been no violation of any rules and no irregularity committed.

5. I heard the learned counsel for both parties and carefully perused the documents. Such documents included a copy of the bye-laws of the Corporation produced by the learned counsel for the applicant and a notification by the State Government relating to the supersession, inter alia, of the said Corporation in the year 2004 produced by the learned counsel by the respondents and the rulings of the Hon'ble Apex Court in Civil Appeal No.4090 of 1991 and S.L.P.(C) 2462 of 1993.

6. During arguments, the learned counsel for the applicant contended that the relief asked for should be granted to him, essentially on three important points – (i) serious illegality committed in posting the applicant who is an officer of the rank of

Commissioner-cum-Secretary in a junior position, (ii) he was to serve under the directions of the Registrar of Cooperative Societies and the C.M.D. who again were junior officers to him and (iii) the very transfer was occasioned due to mala fides.

7. Countering these points, the learned counsel for the Respondents traced the chronology of events commencing from the date of the impugned order till the filing of the O.A. According to him, the irritants relating to the seniority issue have already been sorted out leaving no scope to the applicant to press the O.A. further – thus, the post of M.D. has been elevated to a sufficient status, commensurate with that of the applicant and a senior officer has been posted as the Chairman. He pointed out from past instances the phenomenon of M.Ds and CMDs of the Corporation having to work with Registrars of Cooperative Societies of different seniorities. On the question of irregularity of the Government appointing the applicant as M.D. he submitted that the Government had been consistently following the practice of issuing the appointment order to the officers directly and no legal objections have been raised so far against such appointment orders. If at all any legal problem were there, it was for the Board concerned and not the appointee to raise the issue as in this case.



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8. The following issues are framed for consideration.

- (i) Was the appointment in violation of any law ?
- (ii) Was the proper procedure followed in respect of enhancing the status of the MDs post to an appropriate level ?
- (iii) Was the issue of disparity of seniority sustainable ?
- (iv) Was there any malice in transfer ?

9. As to the question of whether the appointment was in violation of any law, the reference is about the mode of appointment. The learned counsel for the Respondents admits that appointment to the Corporation is provided for under bye-law 19 of the by-laws of the Orissa Scheduled Caste & Scheduled Tribe Development Finance Cooperative Corporation Ltd. made under the provisions of the Orissa Cooperative Societies Act 1962. Hence the bye-laws is a statutory document. Bye-law 19 provides as follows :

“ . Bye-law 19

Appointment of Managing Director and other officers:

The Board of Directors shall appoint an official approved by the Registrar as the Managing Director of the Corporation who



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shall have a seat on the Board subject Byelaw No.17(v).

The Board of Directors subject to rules, if any framed by the Registrar under Section 33A of the Act will be competent to decide the number of officers that will be required for the organization and source of their recruitment and specify their duties and responsibilities. All the officers of the organization shall be under the administrative control of the Managing Director”.

10. To a question whether the appointment was done in pursuance of the above mentioned provisions, the learned counsel for the Respondents replied that it was not so. It was also conceded that the executive instructions appointing officials to outside bodies referred to earlier cannot prevail over statutory prescriptions as above. He submitted that there was no Board in existence on the date of the impugned order, such Board having been superseded the previous year and functions thereof being discharged by the Secretary of the respective Department concerned. It was pointed out that in that case instead of getting the appointment done by the Board, the Secretary should have made the appointment on the basis of approval from the Registrar of Cooperative Societies. It was fairly



admitted that this procedure was also not followed. It is, therefore, clear that the appointment was not done as per the rules. It is axiomatic that if a transfer order has been made in violation of a statutory rule or regulation it will be illegal. This is also the obvious implication of the dicta of the Supreme Court that a transfer order is liable to be struck down if made in violation of the rules. (Rajendra Roy vs. Union of India (AIR 1993 SC 1236). It is, therefore, found that the impugned order is irregular and illegal.

11. On the question of whether proper procedure was followed in respect of enhancing the status of the M.D's post, the learned counsel for the Respondents would argue that all the grievances have been redressed on the representations of the applicant relating to elevation of the status of the M.D. post in the Corporation to an appropriate level. The applicant would however deny that the equalization was done only after the issue of the impugned appointment order. Quite interestingly, both the counsel would cite the same decided case by the Hon'ble Apex Court in Civil Appeal No. 4090 of 1991. One of the issues decided in that case was the date on which the decision to declare equivalence was taken before the Chief Secretary of a State was shifted to another post of equivalent status. It was found by the Hon'ble Apex Court that a decision to declare the post of Secretary of High Power Committee equivalent to the



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post of Chief Secretary of the State had been taken prior to the impugned order in that case. In this case however, such an equalization was done after the issue of the impugned order and the State Government has no case that at least the decision towards such equalization was taken prior to the issue of the impugned orders. The dicta in the above mentioned case does not apply in favour of the Respondents. It is found therefore, that there was delay in the equalization decision

12. On the question of whether the issue of disparity of seniority was sustainable, it is found that from the chart made available there is no strict built-in seniority gap between the past MD/CMDs officials of the Corporation and that of the Registrar of Cooperative Societies at the relative periods. I do not think that any case is made out by the applicant that such absence of seniority gap would have caused any prejudice to him had he joined the Corporation as M.D. It may not be practical or necessary to ensure such pre-determined gap and it is up to the State Government to take care of the administrative exigencies without sacrificing the sensitivities of the officials concerned, especially relating to their ACRs. Hence, I find that maintenance of such seniority gap is not always possible nor is it necessary.

13. As to the question whether there was any malice in the transfer, except the anecdotal assertions



of the applicant, nothing much has been presented to sustain the case. In any case, in view of the findings on the other issues as above, this aspect is not very material in the adjudication of this case

14.I find therefore, that the impugned order is irregular and illegal, there was inexplicable delay in the exercise of equalization and that no proper case is made out malice leading to the transfer.

15.Hence, I order that the impugned order be quashed. No costs.



(N.RAMAKRISHNAN)
MEMBER(ADMINISTRATIVE)