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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.591 OF 2005
CUTTACK, this the 28th day of November, 2007

Bidyadhar Panda Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

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


(K.B.S.RAJAN)
MEMBER(JUDL.)

VJ

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.591 OF 2005
(CUTTACK, this the 24th day of November, 2007)

CORAM:

HON'BLE DR.K.B.S.RAJAN, MEMBR(JUDL.)

Bidyadhar Panda, aged about 42 years, S/O- Narayan Chandra Panda, presently working as Stenographer Gr.II, Doordarshan Kendra, Bhubaneswar, Orissa. Permanent resident of At.Meghamadhav, P.O.-Chakabarapur, P.S.Soro, Dist.-Balasore.

.....Applicant

Advocate for the ApplicantMr.P.K.Nanda.

Versus:

1. Union of India, represented through by its Secretary, Govt, of India, Ministry of Information and Broadcasting, Sastri Bhavan, New Delhi.
2. The Director General, Doordarshan, Prasar Bharati, Broadcasting Corporation of India, Mandi House, Copernicus Marg, New Delhi.
3. The Director General (News), News Services Divison, All India Radio, Prasar Bharati, (Broadcasting Corporation of India), New Delhi.
4. The Director General, All India Radio, Prasar Bharati, (Broadcasting Corporation of India), Akashvani Bhavan, Parliament Street, New Delhi.
5. The Director, Doordarshan Kendra, Bhubaneswar.

JK



6. The Station Director, All India Radio, Baripada.
7. Shri N.K.Rao, S/o not known, presently working as Stenographer, Grade-III, Doordarshaan Kendra PO-Sainik School, Bhubaneswar-751005.

..... Respondents

Advocate for the Respondents

..... Mr. S.B.Jena

ORDER

HON'BLE DR.K.B.S.RAJAN, MEMBER(JUDL.):

The applicant, a Steno Grade II, working at the Doordarshan Kendra, Cuttack on 9-12-1988 as Grade D stenographer, and who was promoted to Grade II in August, 2000, and working at Bhubaneswar, has been issued with a transfer order dated 13-07-2005, transferring him to Baripada from Bhubaneswar. Challenge is on many grounds, including (a) order being beyond the guidelines provisions; (b) purely to accommodate the private respondent and (c) for such move of Grade II, specific permission of the D.G. is required which has not been obtained.

2. Respondents have contested the OA. According to them, the transfer being incidence of service and the applicant having all India transfer liability there should be no judicial interference in respect of the same, as laid down in the case of S.L. Abbas. The applicant was transferred by the competent authority and that this transfer is after 17 years of the applicant's posting at

Bhubaneswar. Again, the transfer was also on the ground that there have been some complaints against the applicant. Posting of the private respondents is on the vacant post (that would be available after the applicant is relieved) and there is nothing illegal about the same.

3. Counsel for the applicant submitted that the move of the applicant is purely to accommodate the private respondent at Bhubaneswar. In doing so, the respondents have ignored the norms of transfer, did not take permission of the competent authority and have posted the applicant to a place where there is no post of Grade II. Thus the transfer becomes within the main mischief of violation of professed norms and to subsequently accommodate some one.

4. The Counsel for the respondents has, however, submitted that the applicant has been in Bhubaneswar since 17 years and transfer is an incidence of service though it has not been indicated in the transfer order that the applicant's transfer was with the approval of the competent authority, the order has been issued "for Director General".

5. Arguments were heard and documents perused. Undoubtedly the authorities can transfer any one to any place. Judicial interference is called for only under certain contingencies. Here is a case where admittedly there is no post of Steno Grade II at Baripada, if so; transfer of the applicant to Baripada asking him to perform the duties of Grade III would amount to reducing the status of the applicant which is not admissible. For transferring Grade II, the procedure followed by the authorities may not be incorrect. That the applicant has been the senior most stenographer may also go well with them but in case the transfer has to be effected, it has to be a proper place and not to a place

where there is no vacancy or post. Again in their counter it has been stated that there have been complaints received from some corner against the applicant consequent to which there has been transfer. If so, without hearing the applicant and without holding due enquiry and coming to a point that the complaint is true if the respondents resort to transfer the applicant that becomes punitive. This is also not admissible. Further the applicant submits that the reason given by the respondents regarding complaint would not be culled out from the impugned order, but specified for the first time in paragraph-10 of the counter. This is not admissible as per the law laid down by the Apex Court in the case of Mohinder Singh Gill Vrs. Chief Election Commissioner (1978(1)SCC405).

6. In view of the fact that the applicant has been posted to a place where there is no post at all of Grade II, the action of the respondents seems to be not bonafide. It may be that applicant is kept in the same pay-scale of Steno Grade II. If there are analogous posts carrying the same pay-scale and the applicant is posted therein, action of the respondents may be justified but when vacant post is only for Steno Grade III carrying lower pay-scale and the applicant who is Steno Grade II with higher pay-scale is asked to perform the duties of Steno Grade III, the same would mean as if the applicant is Steno Grade III and with the benefit of ACP. Such a situation cannot be permitted. Again, just because some complaints have been received, the applicant should not have been shifted because the same becomes punitive. The Courts do not normally appreciate some one being disturbed to accommodate some body else. Applicant in para-4.17 of the O.A. has also stated that he has school going children studying at —

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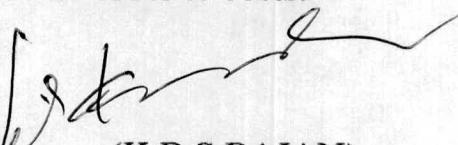
Bhubaneswar. Normally welfare of the children is main criteria when considering the posting. The idea of posting both wife and husband together is to enable them "to look after the welfare of the children, especially till the children are 10 years of age" (see order dated 12.06.97 of the Ministry of Human Affairs and Welfare). This averment of the applicant as to be children education has not been rebutted by the respondents who have in reply to the para-4.17 only stated that the order of transfer has been issued in the interest of organization and justice. According to the applicant vide paragraph-4.13 that another steno Grade II with longer station seniority has been serving in Bhubaneswar, and there has been no justifiable reply. There does not also appear to be any specific hardship faced by the private respondents which should have compelled the authorities to accede to his request for transfer to Bhubaneswar. If on comparative hardship between the posting of the applicant to Baripada and retention of private respondent at his present place of posting, the hardship of the private respondents is more, then there may be some justification towards the applicant. This is not the case here.

7. Thus seen from every angle, there does not appear to be any justifiable reason for the applicant's transfer from Bhubaneswar to Baripada. The general guidelines of senior most employees to be shifted have been violated. The applicant has been posted to the lower post. It is not on any grave hardship that private respondent is brought to Bhubaneswar, without due enquiries with notice to the applicant, transfer on alleged complaints is punitive. Thus the action of the respondents in issuing the impugned order of transfer dated 04.07.05 (Annexure-5) and relieving order dated 13.07.05 (Annexure-6) are thoroughly illegal and cannot stand scrutiny of law. In view of the same, the

[Signature]

above two orders are hereby quashed and set aside. The applicant has already moved to Baripada without any prejudice to his right to challenge the same, the applicant shall be brought back to Bhubaneswar. In that event, it is for the respondents to accommodate private respondent in another post or by creating supernumerary post, within the provisions of law. The applicant has not so far moved, but on leave, he shall be permitted to resume duties as Steno Grade II in Bhubaneswar itself and his leave is regularized by grant of leave due. This order shall be complied with, within a period of one(1) week from the date of communication of this order.

8. Under the above circumstances, there shall be no order to costs.



(K.B.S.RAJAN)
MEMBER(JUDL.)