

O.A. No. 537 of 2006.

Order dated 15th November, 2006.

Order of transfer dated 21st March, 2006 (Annexure-A/2) transferring the Applicant in his present capacity of PA from Keonjharh Head Post Office to Barbil MDG is under challenge in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985.

2. On receipt of the notice, the Respondents have filed their counter objecting the prayer of the Applicant.

3. Heard Learned Counsel appearing for both sides and went through the materials placed on record.

4. Learned Counsel appearing for the applicant has argued that the Respondent No.3 issued Memo dated 18.01.2006 inviting options for Rotational transfer of the year 2006-2007. According to him the said Memo dated 18.01.2006 is meant for the SPM/PA working in single handed or double handed post office. Although the said rotational transfer is not applicable to the Applicant he was asked to exercise his option; for which he submitted his option giving three places of his choice. He has argued that though Smt. Prativa Mohanta

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and Shri Gangadhar Mohanta, both are at present continuing as PAs in the Keonjhar HO more years than the applicant and opted to face rotational transfer, like the applicant, they were not disturbed but the Respondent No.3 discriminatorily transferred the applicant to such a far away place. In support of his plea of pick and choose method of transfer, learned counsel appearing for the applicant by citing the cases of many employees has submitted that there is no reason to disturb the applicant from his place of posting while allowing the others to continue in one place for years together. He has also submitted that though the applicant has submitted representation followed by reminder against such order of transfer, Respondents did not pay any heed to such request. He has, therefore, fervently prayed for quashing the order of transfer of the Applicant.

5. On the other hand, Learned Senior Standing Counsel for the Respondents has submitted that the Applicant is estopped under law to challenge the order of transfer; as pursuant to the said order of transfer he has not only been relieved on 93.95.2006, on his request, an amount of Rs.4000/- has been sanctioned in his favour towards TA advance. While denying the allegation of *mala fide* behind the order of transfer, Learned Senior Standing Counsel has submitted that as the

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applicant has completed his tenure at the present place of posting in public interest he was transferred to Barbil MDG. He has argued that the Applicant is under misconception that the memo dated 18.01.2006 is only meant for the SPM/PA working in single handed or double handed post office he is not liable to be transferred. He has pointed out that option was invited from the SPM/PA who had completed their post tenure and due for transfer but not exclusively meant for the transfer of officials of SPM/PA who have been working in a single handed or double handed post offices. He has clarified that the memo dated 18.01.2006 merely envisages that who have completed their tenure irrespective of period of posting/completion of tenure should not be posted back to the same office during their service period. Drawing my attention to the observations of the Hon'ble High Court of Orissa dated 28.07.2006 made in WP (C) No. 9941 OF 2006 (filed by the Applicant against the order of this Tribunal declining to pass any interim order), Learned Senior Standing Counsel has prayed for dismissal of this Original Application.

6. Having heard the parties at length, went through the materials placed on record.

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7. At the out set, I may record that the consistent view of the Hon'ble Supreme Court and followed by this Tribunal that unless an order of transfer is shown to be an outcome of *mala fide* exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts/Tribunal being not the Appellate Authority over the decisions of the employer/management, interference in the order of transfer, in a routine manner is not warranted. This was the view expressed by the Hon'ble Supreme Court in the cases of Mrs. Shilpi Bose and Others v. State of Bihar and Others -AIR 1991 SC 532; Union of India v. N.P.Thomas-AIR 1993 SC 1605; Union of India v. S.L.Abas -AIR 1993 SC 2444; State of Madhya Pradesh v. Shri Arjun Sing - AIR 1993 SC 1239 ; Abani Kanta Ray v. State of Orissa - 1995 (Suppl.) 4 SCC 169; Union of India and Others v. V.Janardan Debanath and Another - (2004)4 SCC 245; National Hydroelectric Power Corpn. Ltd. Vs. Shri Bhagwan (2001) 8 SCC 574; Union of India v. H.N.Kirtania - (1989 (3) SCC 445); State of Orissa v. Kishore Chandra Samal- 1992 (2) Scale page-251; State of Madhya Pradesh v. S.S.Kourav- AIR 1995 SC 1056; State of UP and Others v. Gobardhan Lal and D.B.SINGH v. D.K.Shukla and Others -

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2005 SCC (L&S)55;and State of U.P. & Ors. v Siva Ram & Anr.-

2005(1) AISLJ 54.

8. No such plea has been advanced or substantiated that the present order of transfer of applicant was in violation of any of the statutory Rules. No doubt, Article 14 of the Constitution of India forbids discrimination among the class of employees. But that does not mean that one can plea such discrimination even in the matter of transfer. Transfer is being made taking several factors into consideration. The employer is the best judge to decide who should be transferred where and at what point of time in the interest of public.

9. It is seen that the Applicant, in this Original Application, repeatedly urged that the transfer order of the Applicant is an out come of *mala fide* of the authorities but without any proof. What was the reason to infer that the authorities utilized the power *mala fide* is also silent in the pleadings of the applicant. The Applicant was not the only employee facing the transfer. Several other have also been transferred along with him. Time without number, the Hon'ble Apex have ruled not to take cognizance of the bald and unfounded allegations of *mala fide*/bias in absence of any documentary proof, it has repeatedly been held that the Court/Tribunal should be slow to

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draw inference from dubious facts. [**Union of India & Ors. V. Ashok Kumar & Ors**, 2006 (1) AISLJ 312 = 2006 SCC (L&S)47]. The Hon'ble Apex Court have also noticed that the allegations of *mala fides* are often more easily made than proved and, therefore, it was observed that the very seriousness of such allegations demands proof of a high order of credibility [**E.P. Royappa v. State of T.N.**, AIR 1974 SC 555=1974 SCC (L&S) 165=(1974)4 SCC 3]. Natural justice also demands that opportunity should be given to the party against whom such allegation of *mala fide*/bias is alleged. In the instant case, none of these principles has been respected by the Applicant. Hence, I am not inclined to accept such bald allegation of *mala fide*, particularly, when the unproved imputations are grave and they are made against his superior officer in the administration. Therefore, it is not at all healthy to allege the vague plea of *mala fide* without any proof,

10. It is also seen that the Hon'ble High Court of Orissa while disposing of the WP (C) No. 9941 of 2006 filed by the Applicant have observed as under:

“Since transfer is an incident of service of an employee and the Government cannot be restrained from issuing order of transfer of their employees in public interest or on administrative”

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ground, we are not inclined to entertain this writ petition."

11. The afore mentioned discussions would go to show that the Applicant has failed to substantiate any of the pleas advanced by him in support of his prayer made in this OA. Hence, applying the ratio of the decisions of the Hon'ble Apex Court and in view of the observations of the Hon'ble High Court of Orissa, quoted above, this Original Application is held to be without any merit and the same is dismissed by leaving the parties to bear their own costs.

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(B.B.MISHRA)
MEMBER (A)