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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.618 of 2006
Cuttack, this the 28th day of February, 2007.

Sunil Kumar Behera ... Applicant
Versus
Union of India & Others ... Respondents

FOR INSTRUCTIONS

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

N.D.RAGHAVAN
(N.D.RAGHAVAN) 28/02/07
VICE-CHAIRMAN

B.B.MISHRA
(B.B.MISHRA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.618 of 2006
Cuttack, this the 28th day of February, 2007.

C O R A M:

THE HON'BLE MR. N.D.RAGHAVAN, VICE-CHAIRMAN
AND
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Sri Sunil Kumar Behera, aged about 28 years, son of Sri Balaram Behera, resident of the village: Bhuinpur Aul, Dist. Kendrapara, at present working as the Motor Vehicle Driver in M.M.Sub Division II, Central Water Commission, Burla, Sambalpur.

..... Applicant.

By legal practitioner: M/s.R.K.Nayak,O.P.Mohapatra, Advocates.

-Versus-

1. Chairman, Central Water Commission, Sewa Bhawan, R.K.Puram, New Delhi-110 066.
2. Superintending Engineer, Hydrological Observation Circle, Central Water Commission, Mahanadi Bhawan, Plot No. A/13&14, Bhoiagar,Bhubaneswar-751 022.
3. Executive Engineer, Eastern Rivers Division, Central Water Commission, Plot No. A/13&14, Bhoiagar, Bhubaneswar-751 022.
4. Executive Engineer, Mahanadi Division Central Water Commissioners, Doctors' Colony, Burla, Sambalpur-768 017.
5. Asst. Engineer, M.M.Sub Division No.II, Central Water Commission, Doctor's Colony, Burla Sambalpur-768 017.
6. Asst. Engineer, Brahmani Sub Division, Central Water Commission, Rourkela, Sundargarh.
7. Shri Basudeb Bagh, M.V.Driver, Brahmani Sub Division, Central Water Commission, Rourkela, Sundargarh.

... Respondents.

By legal practitioner: Mr. U.B.Mohapatra, SSC.

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O R D E R

MR.B.B.MISHRA, MEMBER(A):

The Applicant, a Motor Vehicle Driver in the office of MM Sub Division II, CWC, Burla being aggrieved by the order transferring him to Rourkela and bringing Respondent No.7 in place of applicant, submitted a representation on 24.06.2006. But before giving consideration to the said representation of applicant, Respondent No.7 having been relieved in order dated 19th August, 2006 with direction to report at his new place of posting, he has filed this Original Application u/s. 19 of the A.T.Act, 1985 with the following prayers:

- “(1) The respondents in general and the respondent No.2 in particular be directed not to disturbed the applicant from Burla and allow him to continue in M.M.Sub Division II at Burla during the academic session 2006-07;
- (2) The OP No.3 be directed not to relieve the respondent no.7 from Brahmani Sub-Division Rourkela till further order of this Hon’ble Court . Or during the session 2006-07.”

2. The applicant’s grievance is that on being recruited he joined as a Motor Vehicle Driver in Middle Mahanadi Sub Division II, CWC Burla on 15.01.2003 and before completion of even three years, though he was not the employee having longest stay, he has been disturbed to CWC Rourkela. It is his grievance that he is residing at Burla in a rented house along with his old ailing parents, wife two minor children of which one is reading in class I in the Central School, Sambalpur. It is his case that only to accommodate Respondent No.7 at Burla, such an order of transfer has been passed during the mid academic session. The transfer during mid academic

session would not only disturb the education of his children but also it will have its adverse impact on the health conditions of his old ailing parents who are taking treatment at Burla. He has also pointed out that in the garb of public interest, he has been disturbed with *mala fide* and colourable exercise of power which needs to be quashed.

3. Respondents have filed their counter stating therein that it is not a case of accommodation. The order of transfer has been passed in public interest/exigency of administration by the competent authority. Respondents have averred that the applicant is holding a post with all India transfer liability unlike other work charged staff. The work charged drivers can be transferred to any place in India on administrative requirement/exigencies. The transfer order is an administrative order and the same has been made in accordance with the rule and exigency of government work. The service conditions of the petitioner do not confer any right of permanent stay at a particular place through out. Also this transfer has been made in public interest in order to facilitate similarly placed group C employee who had been posted far away from his native place to serve near his home town. It has been maintained that at Rourkela not only Central School but also all medical facilities are available. Lastly, it has been submitted that the order of transfer has been made as per the instructions governing the field pursuant to which both the applicant and respondent No.7 have reported to their duty at the respective place of posting.

4. We have heard learned counsel for both sides and perused the materials placed on record. Neither in the pleadings nor during submission it has been brought to the notice of this tribunal that the order of

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transfer has been made by an authority not competent to do it nor is it in violation any statutory Rule governing the field. Learned Counsel appearing for the applicant has only canvassed as to how the applicant has been prejudiced by the order of transfer, as also he has made efforts to show that the order of transfer has been made in colourable exercise of power to accommodate the Respondent No.7. On the other hand, Learned Senior Standing Counsel strongly opposed the stand taken by the applicant stating that since the order of transfer has been made in public interest as per the law of the land, it needs no interference. We have also taken note of the written note of argument filed by the Applicant.

5. It is no more *res-integra* that powers to interfere in the order of transfer of a Government servant is very limited. Court/Tribunal can interfere in the order of transfer, if it is made in gross violation of statutory rules or is an out come of colourable exercise of power. It can also interfere if the order, is made by an authority who is not competent to do so. Personal inconveniences are matters for the authorities to consider and on that score, an order of transfer cannot be said to be bad by the Court of law. It is not in dispute that the applicant is holding All India Transfer Liability. It is also trite law that the authorities are competent to transfer one employee in order to accommodate another person in his place on request. In this connection there are numerous decisions of Hon'ble Apex Court rendered over a span of nearly one decade have laid down and reiterated the principles which this Tribunal must apply while considering the validity of an order of transfer. We do not think it necessary to burden this order by

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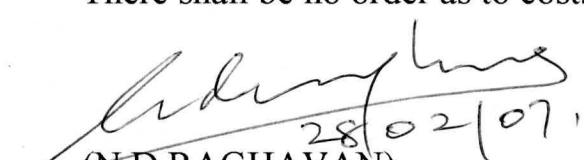
referring to all of them except some of the pronouncements on this aspects are quoted herein below:

6. In the case of **Shilpi Bose vrs. State of Bihar**, (reported in *AIR 1991 SC 532*) it has been held by the Hon'ble Apex Court that where a competent authority issues transfer order with a view to accommodating a public servant the same cannot be interfered with by the court. In the case of **Union of India vrs. H.N. Kirtania** (reported in *1989 (3) SCC 445*), and in the case of **Gujurat Electricity Board vrs. Atmaram Sungomall Pashani** (reported in *AIR 1989 SC 1433*) it has been held that transfer of an officer holding a transferable post cannot be objected to and that Government is the best judge to decide to distribute and utilize the services of an employee. In the case of **State of Orissa vrs. Kishore Chandra Samal** (reported in *1992 (2) Scale-251*), it has been held that in case of transfer within the cadre with identical responsibilities no objection can be made. In the case of **Union of India vrs. S.L. Abbas** (reported in *AIR 1993 SC 2444*) it has been held that "who should be transferred where" is a matter for the appropriate authority to decide. In the case of **State of Madhya Pradesh vrs. S.S.Kourav** (reported in *AIR 1995 SC 1056*) it has been held that Courts or Tribunals are not the Appellate Authority to decide the question of transfer of officers made on administrative grounds. The administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict/interfere with the working of the administration. Also in the case of **Union of India vrs. N.P.Thomas** (reported in *AIR 1993 SC 1605*) it has been held that, if the transfer is not in violation of any statutory rule, no vested right accrued to an employee to claim to continue in one place for eternity.

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7. Keeping in view ~~of~~ the law laid down by the Hon'ble Apex Court, we do not see any justification to interfere with the present transfer of the Applicant especially when the Applicant has sought direction to remain at Burla till the academic session which is going to be over by the end of March, 2007.

8. In the result, this OA fails and is accordingly dismissed. There shall be no order as to costs.


28/02/07
(N.D.RAGHAVAN)
Vice-Chairman


13/07/2007
(B.B.MISHRA)
Member(A)

KNM/PS.