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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 969 of 2002
Cuttack, this the 19th day of August, 2003.

DINABANDHU PRADHAN.

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APPLICANT.

: VRS. :


UNION OF INDIA & OTHERS.

....

RESPONDENTS.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? NO
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO


(B. N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 969 OF 2002
Cuttack, this the 19th day of August, 2003.

C O R A M:

THE HONOURABLE MR. B.N. SOM, VICE-CHAIRMAN

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SRI DINABANDHU PRADHAN, 51 years,
S/o. Late Ananda Pradhan,
Vill./Po: Bodoboresingi,
via: Gobara, dist. Ganjam (O). APPLICANT.

By legal practitioner : Mr. P.K. Padhi, Advocate.

: VRS. :

1. Union of India represented by its
Director General (Posts), Dak Bhawan,
New Delhi-110 001.
2. Chief Postmaster General (Orissa Circle),
At/Po: Bhubaneswar, dist. Khurda-751 001.
3. Post Master General, Berhampur Region,
At/Po: Berhampur, dist. Ganjam (O)-760 001.
4. Director of Postal Services,
Berhampur Region,
At/Po: Berhampur (Gm.),
dist. Ganjam (O)-760 001.
5. Superintendent of post offices,
Aska Division, At/Po: Aska,
dist. Ganjam (O)-761 110.
6. Smt. Saudamini Ghante, SPM,
At/Po: Pattapur, dist. Ganjam (O). RESPONDENTS.

By legal practitioner : Mr. A.K. Bose, SSC.

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN:

Sri Binabandhu Pradhan (Applicant) has filed this original Application U/s.19 of the A.T. Act, 1985 challenging his transfer from the post of S.P.M. Pattapur Sub Post Office to the post of APM (Accounts) Aska Head Post Office made by Respondent No. 5 i.e. Superintendent of Post Offices, Aska Division, Ganjam.

2. The main grievance of the Applicant is that after joining the Department as Postal Assistant on 04.03.1975 in Phulbani postal division, he had applied for transfer to Aska Division under Rule-38 of P&T Manual Vol. IV. His prayer for such transfer was allowed in the year 2000 and he was, accordingly, relieved by the Superintendent of Post Offices, Phulbani Postal Division on 01.06.2001 and he joined as SPM, Pattapur S.O. w.e.f. 27.06.2001. It is his case that just before completion of one year of Posting as SPM of Pattapur S.O., the Res. No. 5, by his order under Annexure-4 dated 21.05.2002 transferred him as APM (Accounts) Aska Head Post Office against a vacant post. Further he stated that his transfer from Phulbani Division was made on the condition that he would not be paid any TA/DA and that, he will rank junior in the divisional gradation list. On his transfer he had also shifted his family to Pattapur and occupied staff quarters attached to the post. Applicant has submitted that this premature posting has been done in contravention of the departmental rules ^{and} without his consent and only to favour

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and accommodate the Res.No.6 at any cost.It was done with mala fide intention;because while Res.No.5 styled this transfer as "in the interest of Service",there was no such cause available in the matter of transferring the applicant from Pattapur SO to Aska HO putting his family into immense difficulties and also forced him to incur unnecessary financial expenditure.

3. The Respondents have rebutted the allegations made in this Original Application by submitting a counter.They have submitted that the Applicant was transferred due to his financial upgradation under BCR scheme and as per the instructions,such officials who are allowed such higher scale of pay as a result of Biennial Cadre Review would be utilised as far as possible for providing better supervision and for dealing with work involving comparatively higher responsibility and better supervisory skill.They have also relied upon the letter of the DG of Posts No.4-75/92-SPB dated 18.6.1993(Annexure-R/3) which provides that officials who are given BCR/HSG-II scale of pay should be posted against norm based HSG-II and LSG Supervisory posts.They have further submitted that the Applicant had challenged his transfer from Patapur in this Tribunal in OA No. 520/2002.This Tribunal had directed that the Applicant should submit a representation before his authorities.Accordingly, the Applicant submitted his representation on 06.03.2002 to the Chief Postmaster General,Orissa,Bhubaneswar.The authority after examining his representation found no irregularity in transferring the Applicant to the post of APM(Accounts),Aska HO since he is

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a BCR official and he is expected to work in supervisory post in the interest of service.

4. I have heard Learned Counsel for both sides and perused the records placed before me.

5. I have given my anxious thoughts to the submissions made by the Applicant and also the arguments made against these points by the Respondents. The grievance of the Applicant is that in less than one year' period of his coming on transfer from Phulbani division to the new place as SPM, Patapur, he was transferred and it was stated that his transfer was in the interest of service. While he was shifted from Patapur, no notice was given to him; nor his willingness was obtained by the authorities. For every appointments in the Department there are a well laid down tenure rules and rotational transfers are made basing on these rules but in this case, his argument is that, all these rules have been over-looked. The plea of the Respondents is that he had to be shifted because one supervisory post, APM(Accounts), HO had to be filled up by a BCR grade official and he was the junior most official available for the posting. Hence he was shifted. But according to the Applicant this argument is fallacious; because in Aska Division there are about 28 BCR officials and there are nine norm-based posts to be filled up. So it was not his turn to move for that post. He has alleged that the Respondent No.3, thus only to accommodate the Respondent No.6 at Pattapur, which has attached quarters, shifted the Applicant within a short period.

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5. Learned Senior Standing Counsel appearing for the Respondents submitted that in transfer matters courts have got very limited role to play. In this case, it has been submitted that as per the DG's order, the Applicant being the junior-most BCR official was posted to fillup the vacant post at Aska HQ. There was, thus, no apparent reason to agitate about the matter. He further submitted that the grievance of the Applicant has been considered at the level of CPMG who also found nothing wrong in the posting of the Applicant. While I agree with the basic submissions of the learned Sr. Standing Counsel that the Courts have got limited role to play in the matter of posting and transfer of the officials/employees, it has also been held that Courts will, however, intervene if there is any miscarriage of justice or colourable exercise of power in implementing the transfer policy by the executive.

The Respondents have submitted copies of the orders providing tenure for various appointments in Gr. 'C' and 'D' level and the orders of DG issued from time to time with regard to rotational transfer of officials at the grassroots level. While going through these orders my notice is attracted to paras 4 and 16 of the rotational transfer policy guidelines for the year 1993-99 issued by the DG of Posts in his letter dt. February, 1998 which runs as under:-

*4. It has been seen that in some places officials belonging to different cadre are waiting since long for their posting to particular stations and it has not been possible to concede their request for one reason or other. In order to accommodate long pending requests for posting to such stations, such transfers may be ordered in really deserving cases by transferring out

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of such stations officials who have the longest stay at the station concerned. Such transfers in respect of nongazetted officials may, however, be kept to the minimum and should be ordered only with the approval of the Regional P.M.G. or the Chief Postmaster General as the case may be.

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16. Transfer in the interest of service may be ordered with the approval of the competent authority even though they may not fall within the purview of the above guidelines."

6. The guidelines given in these two paragraphs are directly related to the issues raised in this case. Firstly, it has been stated that the order of transfer of the Applicant was made in the interest of service; and, secondly, it has been alleged by the Applicant and which has not been controverted by the Respondents that the Respondent No.6 was transferred to pattapur in pursuance of Respondent No.6. of the long pending request. With regard to the first point, the Respondents have not disclosed anywhere that the decision to transfer the Applicant was taken by the Respondent No.5 after obtaining the approval of the Regional PMG or CPMG; because in this case one person who has been transferred out prematurely; one who has come from another division after foregoing the financial benefits like TA/DA and also seniority and, lastly, he was being denied of the benefits of the tenure posting as prescribed in the rotational policy guidelines. This order of transfer is also not in conformity with the guidelines given in para-4, quoted above, as in pattapur the applicant was the only official posted at that point of time and he did not have even one year tenure there. It has also been

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disclosed that Pattapur SO is a double handed office. In the circumstances, it was also possible to accommodate the Respondent No. 6 without even putting the applicant into difficulties. There is no doubt that it is the executive who knows where who should be transferred and posted but this does not mean that the executive is vested with unbridled power to deploy its man power without care and caution. While it is the bounden duty of the executive to cater to the need of Res. no. 6 which does not mean to do the same by putting the applicant into trouble. From the facts of this case it appears that due diligence and proper consideration of the facts and circumstances of the matter had not been given; because while one individual got the benefit as asked for the other got the stick.

7. It was submitted during the course of argument by the learned counsel for the applicant that the applicant, in compliance of the order of transfer under challenge, has joined the post of APM, Aska HO. In the circumstances, nothing survives in this OA for him to agitate. However, the learned counsel for the Applicant submitted before me that the Respondents may be directed to consider the posting of the Applicant to a place of his choice. Keeping in view the fact that the Applicant has faced a premature posting without due notice and as he had already complied with the order of Respondent No. 5 and joined his duty, if the applicant submits an application for a posting of his choice, the Respondent No. 5 may consider the case in right spirit, and oblige him to partially undo the wrong done to him.

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8. In the result, this O.A. is disposed
of in the aforestated terms. No costs.


(B.N. SOM)
VICE-CHAIRMAN