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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.82 OF 2003.
Cuttack, this the 19th day of February, 2003.

ASHOK KUMAR SWAIN.

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APPLICANT.

VRS.

UNION OF INDIA & ORS.

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RESPONDENTS.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

Manoranjan Mohanty
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 19/02/03

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 82 OF 2003.
Cuttack, this the 19th day of February, 2003.

C O R A M:-

THE HONOURABLE MR. MANORANJAN MCHANTY, MEMBER(JUDL.)

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ASHOK KUMAR SWAIN,
Aged about 38 years,
S/o. Bhagabat Swain,
at present working as
A.F.O. (T.A. Support),
Aviation Research Centre,
Charbatia, Choudwar,
Dist: Cuttack, permanently residing at
Panch Sarang, Balarampur, PO: Nischintakeilli,
District: Cuttack.

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APPLICANT.

By legal practitioner: M/s. B.S. TRIPATHY,
M.K. Rath,
J. Pati,
S. Mohapatra,
Advocates.

:VERSUS:

1. Union of India, represented through
the Cabinet Secretary, Cabinet Secretariat,
Government of India, Bikaner House Annexe,
Sahajahan Road, New Delhi-110 011.
2. Special Secretary,
Aviation Research Centre,
East Block V, R.K. Puram,
NEW DELHI-110 066.
3. Deputy Director(Admn.),
Aviation Research Centre,
Charbatia, Choudwar,
Dist. Cuttack.

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RESPONDENTS.

By legal practitioner: Mr. B. Dash,
Additional Standing Counsel(Central).

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O R D E R
(O R A L)

MR. MANORANJAN MOHANTY, MEMBER(JUDICIAL) :-

In this Original Application U/s.19 of the Administrative Tribunals Act,1985, the Applicant Sri Ashok Kumar Swain, an Assistant Field Officer (I.A.Support) in Aviation Research Centre, stationed at Charibatia(Cuttack/Orissa) has assailed the order of his relief from A.R.C., Charibatia(to join at A.R.C., New Delhi) under order Annexure-3, dated 01-02-2003.

2. It is the case of the Applicant that on being relieved from A.R.C., New Delhi he joined at ARC, Charibatia, on 03-09-2001 and while continuing as such (with some ulterior motive, as the Applicant was not pulling on well with the Deputy Director,ARC,Charibatia) he has been asked within a short span of time, to go back on transfer to ARC, New Delhi and, accordingly, without serving on him any order of transfer, he has been relieved from ARC, Charibatia under Annexure-3 dated 01-02-2003. He has raised several grounds against the relief order in question in this Original Application; as also in his representation made to the Respondents. Amongst the other grounds, he has pointed out that the order of relief(transferring him from ARC,Charibatia to New Delhi) is nothing but an out come of malice in order to frustrate the applicant to prosecute his case pending in this Tribunal in OA No.995/2002 and to defend his case in the disciplinary proceedings pending against him under Rule-64 of the CCS(CCA) Rules,1965.

3. Respondents have filed their show cause stating therein that since the Applicant has been transferred from A.R.C., Charibatia to A.R.C., New Delhi in public interest, the same is not to be interfered. Further it has been urged by the Respondents that the order of transfer had been passed by the ARC Headquarters at New Delhi and the same has been only communicated by the Deputy Director, ARC, Charibatia to the Applicant, under Annexure-3 dated 01-02-2003 and that, since the Applicant was transferred to ARC, Charibatia on compassionate ground and since he is holding a post having all India transfer liability, no wrong was committed by the Respondents in transferring the Applicant in public interest.

4. Heard Mr.B.S.Tripathy, Learned Counsel for the Applicant and Mr.B.Dash, Learned Additional Standing Counsel for the Union of India, appearing for the Respondents and perused the records. In course of hearing, learned Addl. Standing Counsel Mr.B.Dash, has also placed on record the order of transfer basing on which the relief order under Annexure-3 was issued.

5. Mr.B.S.Tripathy, Learned Counsel appearing for the Applicant has led emphasis on the point that since the Applicant has made allegation as against the Deputy Director, ARC, Charibatia, the order of transfer has been issued at a short span of time; though the Applicant is not liable to be disturbed at this stage even according to the Circular issued by the Respondents governing the transfer of the employees of the ARC. Learned Counsel appearing for the Applicant also submitted, during the hearing, that

since the Applicant is facing Departmental proceedings under Rule 16 and the date of such hearing was fixed to 4th and 5th February, 2003, the impugned transfer at this stage shall seriously prejudice the Applicant in defending his case. It has been further argued by the learned Counsel appearing for the Applicant that as the Applicant has challenged the action of the Respondents (with regard to the recovery of the house rent from the pay of the Applicant) in O.A.No.995/2002 (wherein, stay order has been passed by this Tribunal) this is an attempt to frustrate the Applicant from pursuing the case pending before this Tribunal. At last, the Applicant's counsel has submitted that in case the Applicant is disturbed at this stage, he will, necessarily, face the immense difficulties in his family front. In support of his contention, learned counsel for the Applicant has relied upon the decision of the Hon'ble High Court of Orissa rendered in the case of KHALESWAR SAHOO vrs. ENGINEER IN CHIEF-CUM-SECRETARY TO GOVT. IN THE DEPTT. OF WORKS, ORISSA (reported in 2003(I)OLR 174) wherein it has been held that no useful purpose will be served in a case where a transfer order is challenged if the Tribunal or the Court while issuing notice on the question of admission, refused to grant an interim order; in the case of UDHAB CHARAN SAHOO vrs. DEPUTY DIRECTOR, ARC, CHARIBATIA AND OTHERS (in WP(C)NO.5294/2002) wherein it has, virtually, been stated that transfer order issued shortly after filing of a litigation against the authority smacks mala fides; and the decisions of the Hon'ble Apex Court of India rendered in the case of B. VARADHA RAO vrs. STATE OF KARNATAKA AND OTHERS (reported in AIR 1986 SC 1955). He has also

placed reliance on the circular issued by the Department on 16-09-1983 fixing the normal tenure in a station to be 3 to 4 years.

6. No doubt the allegation of mala fide is easy to urge but difficult to prove. The burden of establishing mala fides is very heavy on the person, who alleges it. The allegations of mala fide are often more easily made than proved and the very seriousness of such allegation demands proof of a high order of credibility. On perusal of records it is evident that the impugned order of transfer is stated to have been passed in public interest. The expression 'public interest' is not a magic word which can do service for anything in any situation; nor is it a carpet under which anything could be swept. The expression 'public interest' has a definite purport and in a particular case such interest must be disclosed or discernable. The expression 'public interest' like the expression 'exigency public service' is often made as an apology for something that cannot be justified. I am not unaware that these concepts are not capable of visible demonstration. At the same time, they cannot be used as a camouflage for a collateral purpose. No where in the show cause filed by the Respondents, it has been mentioned as to what was the public interest in issuing the impugned order of transfer. When the case has been challenged before a court of law, it was the duty of the Respondents to explain the basis of public interest or details of public interest, on the basis of which impugned order of transfer has been made. At the same time, it is worth to note that transfer is an incident of service and

the Applicant is, admittedly, holding a post having all India transfer liability. It is also a well settled law that employer is the best person to decide as to when and where an employee is to be transferred and posted.

From the facts and circumstances stated above, since the order of relief under Annexure-3 dated 01-02-2003 smacks of mala fide (the same having been issued shortly after intervention of this Tribunal in O.A.No.995/2002), I think it just and proper to command the Respondent No. 2 to whom the Applicant has made a representation (under Annexure-2 dated 16-10-2002) to re-consider the matter of transfer and relief of the Applicant from ARC, Charibatia to ARC, New Delhi, within a period of thirty days from the date of receipt of a copy of this order (by treating the averments made in this Original Application to be a representation addressed to him), and, till then the order of relief under Annexure-3 dated 01-02-2003 shall not be given effect to and, as a consequence, the Applicant should now be allowed to continue in his former post at ARC, Charibatia.

7. This Original Application is, accordingly, allowed by leaving the parties to bear their own costs.

Manoranjan Mohanty
(MANORANJAN MOHANTY)

MEMBER (JUDICIAL) 19/02/03

KNM/GM.