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O.A.NO. 130 OF 2007

Jitendra Kumar Das Applicant
Vrs.

Union of India and others Respondents

ORDER DATED 31st May 2007

N.D.Raghavan, Vice-Chairman

The applicant, working as Office Superintendent in the Regional Office of the National Commission for Scheduled Tribes, Bhubaneswar, District Khurda, Orissa State, has filed this Original Application under Section 19 of the A.T.Act, 1985, for quashing Annexure 2, the office order dated 19.3.2007, issued by the Under Secretary to the Government of India, National Commission for Scheduled Castes, transferring the applicant to National Commission for Scheduled Castes, State Office, Chennai, as being illegal, arbitrary and without jurisdiction. He has also prayed for interim relief to stay operation of the said Annexure-2.

2. The Tribunal, by order dated 94.2007 directed issuance of notice of motion for admission to the Respondents and as an ad interim measure, stayed operation of the order under Annexure-2 so far as the applicant is concerned. The Tribunal also directed Dasti service of notice on Respondent No.5, the Research Officer and Regional Head, National Commission for S.T., Bhubaneswar, Dist. Khurda and issuance of notices to the other Respondents by Speed Post at the cost of the applicant. On




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the applicant's complying with the direction of the Tribunal, the notices were so issued.

3. In the notices issued the Respondents were directed to show cause as to why the application should not be admitted, or why it should not be disposed of at the stage of admission itself, and if admitted, why it should not be disposed of at the subsequent stage without any further notice. It was further indicated in the notice that in order to contest the application, the Respondents might file their counter along with the documents in support thereof and after serving copy of the same on the applicant or his legal practitioner by 12.4.2007 and appear before the Tribunal either in person or through a legal practitioner/presenting officer appointed by them in this behalf along with the relevant records, failing which the application would be heard and disposed of in their absence without any further notice to them.

4. Shri P.R.J.Dash, the learned Additional Standing Counsel, appeared for Respondent Nos. 1 to 5 and Shri H.S.Mohanty, learned counsel, appeared for private Respondent No. 6 who has been posted in place of the applicant. When the matter came up on 24.4.2007 for consideration of the question of admission and continuance or otherwise of the interim order of stay, the learned counsels appearing for the Respondents took time to file counter to the O.A. However, a preliminary counter was filed by Respondent No.6 on 4.5.2007. Thereafter the matter was posted to 11.05.2007. On 11.5.2007 the learned counsel for the



applicant and the learned ACGSC for the departmental Respondent Nos. 1 to 5 were heard and orders were reserved. After reservation of order was dictated in the open Court, the learned counsel for private Respondent No.6 appeared and requested for being heard in the matter. Later on, order was passed by the Bench posting the matter to 21.5.2007 under the heading 'For Being Spoken To'. Though the learned ACGSC was fully heard on 11.5.2007 and the matter was posted to 21.5.2007 for hearing the learned counsel for Respondent No.6 under the heading 'For Being Spoken To', the learned ACGSC for the Respondent Nos. 1 to 5 filed MA No. 327 of 2007 for time to file counter on behalf of the said Respondents. However, the matter was adjourned to 24.5.2007 when the learned counsels appearing for the parties were heard and order was reserved. The above proceedings in the O.A. were recorded only to point out that because of the departmental Respondents and private Respondent No.6 the matter was dragged on and the interim order staying operation of the order transferring the applicant was continued and further that the Tribunal was unable to dispose of the matter as expeditiously as it has been required to.

5. Brief facts of the applicant's case are that the applicant joined as LDC in 1984 in the National Commission for Scheduled Castes and Scheduled Tribes (NCSCST), was promoted as UDC in 1997 and thereafter as Office Superintendent in 2005 and was posted to National Commission for Scheduled Tribes (NCST). NCSCST was bifurcated into



two Commissions, namely, National Commission for Scheduled Castes (NCSC) and NCST in 2004 and the applicant was allotted to NCST (Annexure A/1). Therefore, the applicant claims that he remained under the control of the NCST for all purposes. While continuing as Office Superintendent in the Regional Office of NCST, the office order dated 19.3.2007 (Annexure 2) came to be issued by the Under Secretary, NCSC, who has no jurisdiction, power and authority to transfer the applicant from NCST to NCSC. The applicant has also contended that the transfer order has been issued only to accommodate the private Respondent No.6 on his promotion as Office Superintendent, while he was working in the Regional Office of NCSC, Bhubaneswar. The applicant has also stated that in the event of his untimely transfer he will be unable to look after his ailing wife and dependant brothers. Soon after receipt of the order of transfer the applicant claims to have made a representation on 25.3.2007 (Annexure 3) to the Under Secretary, NCSC, New Delhi, requesting for consideration of his case and retention at the Regional Office of NCST, Bhubaneswar and thereafter filed the present O.A. on 2.4.2007 for the relief and interim relief stated earlier.

6. As stated earlier, the departmental Respondent Nos. 1 to 5 have not filed counter.

7. The private Respondent No. 6 has filed a preliminary counter denying the averments made by the applicant in the O.A.



8. We have perused the pleadings available on record and heard the learned counsel for the parties.

9. It is well settled that transfer of employee is the prerogative of the authorities concerned and Court or Tribunal should not normally interfere therewith, except when the transfer order is shown to be vitiated as mala fide, or in violation of any statutory provision, or has been passed by an authority not competent to pass such an order. While so, the allegation of mala fide must be based on concrete material and must inspire confidence of the Court.

10. Keeping in view the above principle, we proceed to consider the contentions of the applicant as raised by him and his learned counsel.

11. The first contention of the applicant is that the erstwhile NCSCST having been bifurcated into organizations, namely, NCSC & NCST, and the applicant having been assigned to NCST, the authorities of NCSC do not have jurisdiction, power and authority to transfer him from NCST to NCSC. In support of his contention, the applicant has relied on Annexure 1, the order dated 1.12.2004 issued by the Government of India, NCSC whereunder the applicant has been assigned to NCST. Respondent No.6, while denying this statement of the applicant, has relied on Annexure F.1, the letter dated 6.10.2005 issued by the Deputy Secretary to the Government of India, Ministry of Social Justice and Empowerment, to the Joint Secretary, NCST, and has submitted that the bifurcation of posts between the two Commissions has still not been finally decided and that



the cadre management till date is vested with the NCSC only. To further buttress his stand, Respondent No.6 has relied on Annexure F.2, the office order dated 25.2.2005 and Annexure F.3, the office order dated 21.2.2006 issued by the NCSC. We have perused these two orders and found that by the first order dated 25.2.2005 (Annexure F.2) the applicant has been granted ad hoc promotion to the grade of Office Superintendent and by the second order dated 21.2.2006 (Annexure F.3) his ad hoc promotion to the grade of Office Superintendent has been regularized. In view of this, we have no hesitation to hold that the cadre management of both NCSC & NCST is vested with the NCSC alone, that the applicant belongs to the joint cadre consisting of the personnel of NCSC & NCST, and that the NCSC is well within their domain to issue the impugned order transferring the applicant from NCST, Regional Office, Bhubaneswar to NCSC, Regional Office, Chennai.

12. So far as the second contention of the applicant that in order to accommodate Respondent No. 6, at Bhubaneswar, on his promotion as Office Superintendent, the impugned order has been issued transferring the applicant to Chennai and posting Respondent No.6 at Bhubaneswar. Except making this bald statement, the applicant has not placed any material before us showing malevolence of the Respondent-authorities. It is no doubt true that by the same office order dated 19.3.2007 (Annexure 2) Respondent No. 6 has been promoted to the grade of Office Superintendent and posted as such to the State Office, NCSC, and the



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applicant has been transferred from Bhubaneswar to Chennai, in public interest. The applicant has not disputed that his transfer has been made in public interest. It has been well settled that Court or Tribunal should not interfere with transfer order which is made in public interest and for administrative reasons. A Government servant holding a transferable post has no vested right to remain posted at one place or the other and he is liable to be transferred from any place to anywhere. Therefore, order issued by the competent authority does not violate any of his legal rights. Who should be transferred and where, is a matter for the appropriate authority to decide. The Tribunal is not an appellate authority sitting in judgment over order of transfer and it cannot substitute its own judgment for that of the authority competent to transfer. In view of the above position of law and in the absence of any material being placed by the applicant before us in support of his claim that he has been shunted out from Bhubaneswar by the authorities in order to accommodate Respondent No. 6 on his promotion, we reject the second contention of the applicant.

13. Third contention of the applicant is that the impugned order of transfer would cause a lot of difficulties and dislocations in as much as his daughters are studying at Bhubaneswar and also that he would not be in a position to look after his ailing wife and unemployed brothers. The applicant has not disputed that he has all India transfer liability. The applicant by his representation dated 23.3.2007 (Annexure 3) has drawn



the attention of the competent authority to the problems that he would be facing in the event of his transfer outside Bhubaneswar and therefore requested for his retention at Bhubaneswar. The applicant's contention is that he should be allowed to continue at Bhubaneswar till his representation is disposed by the competent authority. But Respondent No.6 by filing an additional preliminary counter on 21.5.2007 has disclosed before us that the applicant's representation dated 23.3.2007 (Annexure 3) has been duly considered and rejected by the competent authority by its order dated 16.5.2007 (Annexure F.15 to the preliminary counter). The applicant has not placed any material before us showing that in the event of his transfer from Bhubaneswar his daughters would be unable to receive proper education and his ailing wife would be deprived of medical facilities as she was getting at Bhubaneswar. He has also not given the particulars of his unemployed brothers showing their dependency. In the absence of these materials and in view of the fact that the authorities have duly considered and rejected the applicant's representation dated 23.3.2007 (Annexure 3), we are unable to accept the contention of the applicant with regard to his difficulties and dislocations as a sequel to the impugned transfer order.

14. No other ground having been urged by the applicant and all the contentions of the applicant having failed, we hold that the applicant has not been able to make out a case for the relief claimed by him.



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15. In the result, the Original Application is rejected at the stage of admission itself. No costs.

B.B.Mishra
(B.B.MISHRA)
ADMINISTRATIVE MEMBER

N.D.Raghavan
(N.D.RAGHAVAN)
VICE-CHAIRMAN

PPS

