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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 192 OF 2007

Cuttack, this the day of September, 2007

Atul Kumar

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ?
- 2) Whether it be sent to the Principal Bench or not?

(N.D.RAGHAVAN)
VICE-CHAIRMAN

fix for pronouncement
on 14.09.07. Adh.
13.09.07

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Cuttack, this the day of September, 2007

CORAM:

HON'BLE SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

Atul Kunar, aged about 57 years, son of late Satrughana Kunar at present working as J.T.O.-II, Aviation Research Centre, Charbatia, At/PO-Charbatia, Dist. Cuttack Applicant.

Advocates for applicant -M/s Ashok Mishra & S.C.Rath

Both absent hd

Vrs.

1. Union of India through Deputy Director (Admn.), Aviation Research Centre, At/PO Charbatia, Dist. Cuttack.
2. Deputy Director (Air Wing), Aviation Research Centre Headquarters, New Delhi.
3. Special Secretary, Aviation Research Centre, D.G.(S), cabinet Secretariat, East Block, V.R.K.Puram, New Delhi 110066
4. Assistant Director (B), Aviation Research Centre, D.G.(S), Cabinet Secretariat, EastBlock, VRK Puram, New Delhi 110066.
5. P.K.Mohanty, working as J.T.O.II, Aviation Research Centre, Saraswa, Saharangpur, Uttar Pradesh.

Respondents

Advocate for Respondents – Mr.P.R.J.Dash, ACGSC. *absent* lie

ORDER

SHRI N.D.RAGHAVAN, VICE-CHAIRMAN

Applicant, who claims to have been working as J.T.O.-II in Aviation Research Centre, Charbatia (State of Orissa), has filed this Original Application praying for quashing the order of transfer No.74/2007, dated 12.4.2007 (Annexure 1) transferring him from Charbatia to Sarsawa. He has also prayed for a direction to the

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departmental Respondents to allow the applicant to continue in his present place of service, i.e., Aviation Research Centre, Charbatia.

2. This Original Application was filed on 23.5.2007 and placed before the Bench on 31.5.2007 for considering the question of admission and prayer for staying operation of the impugned order of transfer. By order dated 31.5.2007 notices of motion for admission of the O.A. and on the prayer for stay were directed to be issued to the Respondents returnable in 4 weeks. The O.A. was directed to be posted before the Bench on 28.6.2007. On 28.6.2007 Shri P.R.J.Dash, the learned Additional Standing Counsel appeared for departmental Respondent Nos. 1 to 4 and none appeared for private Respondent No.5. No counter was filed by the departmental Respondents, nor was the relevant record produced before the Bench on 28.6.2007. The Tribunal by order dated 28.6.2007 granted stay of operation of the order of applicant's transfer and allowed time to the departmental Respondents to file counter by 12.7.2007 to which the O.A. stood posted for considering the question of admission and continuance or otherwise of the interim order of stay. On 12.7.2007 the learned Additional Standing Counsel again prayed for two weeks time to file counter. However, time was granted till 19.7.2007 and interim order of stay was continued till then. On 19.7.2007 the learned Additional Standing Counsel, instead of filing counter, filed MA No. 389 of 2007 for vacating the interim order of stay. The consideration of the



said MA No.389 of 2007 was deferred till 27.7.2007 by which time the learned Additional Standing Counsel was to file counter.

3. On 27.7.2007 the learned counsels M/s Ashok Mishra & S.C.Rath for the applicant and Mr.P.R.J.Dash, Id. ACGSC for the departmental Respondents, did not appear. Applicant Mr. Atul Kunar and Mr. B.Panda, Assistant, A.R.C.Charbatia, purported to be the representative of the departmental Respondents appeared. A counter was filed by the said Mr.B.Panda on behalf of the departmental Respondents. The reason for non-appearance of the learned counsels for the parties was stated to be on account of Advocates' strike on court work before this Bench on the basis of a purported resolution of the CAT Bar Association. In this connection, , I would like to refer to the decision of the Hon'ble Supreme Court in the case of Ramon Services Pvt.Ltd. v. Subhash Kapoor and others, JT 2000 (Suppl.2) SC 546, wherein Their Lordships, in paragraphs 24, 27 and 28 of the judgment, have held that no advocate can take it for granted that he will appear in the court according to his whims and fancies or convenience. It would be against professional ethics for a lawyer to abstain from the court when the cause of his client is called for hearing or further proceedings. In appropriate cases the court itself can pass effective orders for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession and the defaulting Courts may also be



contributory to the contempt of the Hon'ble Apex Court. Keeping in view the case law laid down by the Hon'ble Supreme Court, the applicant in person and the departmental representative ^{did too in person -} were heard, the materials available on record were perused and order was reserved.

4. Brief facts of the applicant's case are that while working as J.T.O.-II in Aviation Research Centre (ARC), Charbatia, he was ordered to be transferred from Charbatia to Sarasawa, vide Annexure 1, the Order No.74/2007 dated 12.4.2007, and the private Respondent No.5 was sought to be posted in his place. It is the grievance of the applicant that he is aged 57 years and left with only two years and ten months of service to retire on superannuation and that the order of his transfer is in clear violation of the transfer policy guidelines issued by the Department on 16.3.2004 (Annexure 2) which inter alia provide that the tenure of minimum stay of three years at a place is not applicable to the officials who are above 55 years of age. It is the further grievance of the applicant that after issuance of the impugned order of transfer dated 12.4.2007, he made a representation to the Respondent No.3 ventilating his grievances against the transfer order that on his appointment to the post of JTO-II he was transferred from Charbatia to Palam where he worked from 7.6.2002 to 31.6.2004 and thereafter he was transferred back to Charbatia where he joined on 1.7.2004; that as per the transfer policy guidelines dated 16.3.2004, the rotational transfer is not applicable to him, he being aged more than 55 years; and that on the verge of his retirement on



superannuation he being a landless person has to arrange a house site to settle after retirement and he has to finalize the marriage negotiation of his daughter. The said representation dated 16.4.2007 (Annexure 3) having yielded no fruitful result, the applicant has filed this O.A. on 23.5.2007 for the relief stated here-in-before .

5. The departmental Respondent Nos. 1 to 5 have filed a counter disputing the averments made by the applicant in the O.A. They have inter alia stated that the order transferring the applicant from Charbatia to Saraswa was issued in public interest and in accordance with the transfer policy guidelines which provide that all principles laid down therein are subject to operational requirements and exigencies of service; that the applicant having been left with 2 years and 10 months for retirement from Government service, the order of his transfer is in no way in contravention of the transfer policy guidelines; that the applicant's representation dated 16.4.2007 was duly considered and his request to cancel the order of transfer was not acceded to, vide Message No.2878 dated 16.5.2007 (Annexure R/1), in view of the administrative exigency and public interest; and that the order of transfer of the applicant and the private Respondent No.5 was issued on functional need in as much as the applicant has got expertise in Workshop Job and the private Respondent No.5 has got expertise in Montec Ladder; and that on examination of the job requirements at both the places and the expertise of the applicant and private Respondent No.5, the transfer order has been issued. In support



of their plea, the departmental Respondents in their counter have relied on a number of decisions of the Hon'ble Supreme Court and of different High Courts which have been gone through by me.

6. The law is well settled that the transfer of an officer holding a transferable post cannot be objected to. The transfer is an incidence of service. The Government is the best judge to decide, to distribute and *to* ~~to~~ utilize the services of an employee. Who should be transferred and where, ~~is a~~ *are* matters for the appropriate authority to decide. Tribunal or Court is not the appellate authority sitting in judgment over orders of transfer. The Court or Tribunal should not interfere with a transfer order which is made in public interest and for administrative reasons unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, or of any prescribed norms or principles governing the transfer. Keeping in view the said settled position of law, I have to consider the contentions raised by the parties.

7. It has been contended by the applicant that the order of his transfer from Charbatia to Saraswa is in clear violation of the transfer policy guidelines dated 16.3.2004 (Annexure 2). The departmental Respondents, while refuting the submission of the applicant, have stated that the applicant having been left with two years and ten months of service for retirement on superannuation is not immune from transfer and that the applicant having all India transfer liability, like all other employees working in the Department, has been transferred from




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Charbatia depending on the operational requirements and exigencies of service. In order to examine the rival contentions of the parties, it is necessary to quote the relevant portions from the transfer policy guidelines issued by the Respondent-Department on 16.3.2004;

“NORMAL TENURE OF POSTING AT A STATION/HEADQUARTERS

2. The tenure of minimum stay at Stations/Headquarters for all posts is three years. It does not imply that the officials will be posted out after three years, which will depend on factors indicated in the ensuing paragraphs.
 - (i) **The tenure will not be applicable for the officials who are above 55 years of age. Others having less than two years of service left for superannuation may be retained or transferred to a station of their choice as the case may be.**
 - (ii) Officials who have spent their entire service period at a place, their transfer may be considered. If he has completed at least ten years in the same station, he should be transferred.
 - (iii) The normal tenure of Group “A” officers at a station is 3 years. This, however, does not preclude the competent authority (SS, ARC) to retain/recall any officer earlier, in the exigencies of services.
(Emphasis supplied)

From the above guidelines contained in the transfer policy issued by the Respondent-Department, it is clear that the tenure of minimum stay at Stations/Headquarters for all posts is three years. Sub-paragraph (ii) of paragraph 2 of the transfer policy stipulates that the tenure will not be applicable for the officials who are above 55 years of age and that others having less than two years of service left for superannuation may be retained or transferred to a station of their choice as the case may be. The applicant's contention that he is immune from transfer is based on the first sentence of sub-paragraph (i) whereas the Respondents' stand is based on the second sentence of sub-paragraph (i). It is to be seen as to whether the applicant's transfer, as impugned in this O.A., has been



ordered on his completing the tenure of three years. The applicant has stated in his representation dated 16.4.2007 (Annexure 3) and also in his affidavit dated 31.5.2007 filed in this case that after working at ARC Air Wing, Palam, at JTO-II from 7.6.2002 to 31.6.2004, he was transferred to Charbatia where he joined on 1.7.2004. The Departmental Respondents have not refuted this statement of the applicant. The order of transfer dated 12.4.2007 (Annexure 1) has apparently been issued transferring the applicant from Charbatia to Sarswa with effect from 31.5.2007, when the applicant was about to complete the tenure of minimum stay of three years at Charbatia station. It is thus clear that the applicant's transfer has been ordered in clear violation of the guideline contained in the transfer policy issued by the Department on 16.3.2004 (Annexure 2). The Departmental Respondents in their counter have not given any specific reply to the statement made by the applicant in his O.A. which is based on the guideline contained in the first sentence of sub-paragraph (i) of paragraph 2 of the transfer policy (Annexure 2), but have tried to justify their decision in transferring the applicant from Charbatia to Saraswa by putting emphasis only on the second sentence of sub-paragraph (i) of paragraph 2. The second sentence:

“Others having less than two years of service left for superannuation may be retained or transferred to a station of their choice as the case may be.”

of sub-paragraph (i) of paragraph 2 of the transfer policy dated 16.3.2004



is applicable to the persons with less than two years of service left for superannuation only. This provision is in the nature of a special dispensation in the cases of the said category of persons, otherwise in terms of sub-paragraph (ii) the persons who have spent their entire service period or at least ten years at a place are liable to be transferred. In the instant case the applicant has not stayed either permanently or for ten years at Charbatia. On transfer from Palam the applicant joined Charbatia on 1.7.2004. He has been ordered to be transferred from Charbatia to Saraswa by order dated 12.4.2007 with effect from 31.5.2007 only after remaining at Charbatia for nearly three years. Therefore, his present transfer from Charbatia is clearly hit by the guideline contained in the first sentence of paragraph 2(i) of the transfer policy guidelines dated 16.3.2004(Annexure 4) and I so hold.

8. It has been next contended by the applicant that the impugned order of his transfer from Charbatia to Saraswa has been issued mala fide and with a view to accommodating the private Respondent No. 5. The Departmental Respondents in paragraph 3 of their counter have clearly admitted that Shri P.K.Mohanty (Respondent No.5) submitted a representation seeking his transfer to ARC, Charbatia on the grounds of (i) higher education of his children, (ii) medical problem of his wife, (iii) looking after ancestral property, (iv) settling marriage of his daughters; that his request was placed before the Transfer Committee set up to consider such requests; and that on consideration of his representation it was



decided that the private Respondent No.5 should be transferred and posted at ARC, Charbatia in place of the applicant by the impugned transfer order. While admitting so, the departmental Respondents have stated about the expertise of the applicant in the Workshop Job which is required at Saraswa and the expertise of private Respondent No.5 in the Montec Ladder which is required at Charbatia and therefore, in view of the provision contained in the transfer policy guideline that the principles laid down therein are subject to operational requirements and exigencies of service, there is no infirmity in the order transferring the applicant from Charbatia to Saraswa. The departmental Respondents have not produced before this Tribunal the proceedings of the Transfer Committee which recommended the transfer of the applicant and Respondent No. 5 to show that the expertise possessed by the applicant as well as Respondent No.8 and the functional requirements at ARC, Charbatia and ARC, Saraswa, were considered by the Transfer Committee. The applicant's grievance is that his representation dated 16.4.2007 (Annexure 3) was not given due consideration by the departmental authorities. As stated earlier, the applicant had also mentioned the difficulties that he would be facing in the event of his movement from Charbatia to Saraswa. The departmental Respondent's reply in the counter is that the competent authority duly considered the applicant's representation, but did not accede to his request for cancellation of the transfer order. In support of their statement, the departmental



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Respondents have filed the RX message dated 16.5.2007 (Annexure R/1). From Annexure R/1 it does not appear that the competent authority has considered the applicant's representation judiciously in as much as the same is bald and cryptic except containing the following communication:

"PLEASE REFER DD(A) CBT LETTER NO.VII/18(2)/2007(23) DTD.23.4.07 REGARDING CANCELLATION OF TRANSFER IRO SHRI ATUL KUNAR,JTO II(A/F).

HIS CASE WAS CONSIDERED BY THE COMPETENT AUTHORITY BUT NOT ACCEDED TO (.) HE MAY BE RELIEVED AS PER TRANSFER ORDER NO ARC AW 01/98(VI) 2848 DTD.12.4.07(.) ECM(./)"

After giving my anxious consideration to the facts and circumstances of the case, I have no hesitation to hold that the non-consideration of the applicant's grievances and the problems mentioned in his representation dated 16.4.2007 (Annexure 3) and the bald order issued by the departmental authorities rejecting his representation amount to denial of just, fair and proper treatment to the applicant by the departmental Respondents in the matter of his transfer and therefore, the impugned order of transfer is liable to be interfered with.

9. In consideration of all the above, the impugned order of transfer of the applicant from ARC, Charbatia to ARC, Saraswa (Annexure 1) is quashed. The applicant shall be deemed to be continuing as JTO-II at ARC, Charbatia. The departmental Respondents are directed to allow the applicant to resume his duties at ARC, Charbatia, as usual.

10. In the result, the Original Application is allowed. No costs.



(N.D. RAGHAVAN)

VICE-CHAIRMAN