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O.A.NO. 309 OF 2007

S.K.Parida ..... Applicant

Vrs.

Union of India and others ..... Respondents

ORDER DATED 21st SEPTEMBER 2007

Mr.Dillip Kumar Mohanty, the learned counsel for the applicant is absent. The applicant in person is present and wants to be heard. I would not have permitted the applicant to appear and make his submissions as he has engaged an Advocate, but for the non-appearance of his counsel on account of Advocate's strike on Court work before this Bench on the basis of purported CAT Bar Association resolutions. In this connection, I would like to refer to the decision in the case of **Raman Services Private Limited vrs. Subash Kapoor and others, reported in JT 2000 (Suppl.2) S.C. 546**, wherein at paragraphs 24, 27 and 28 Their Lordships have held that no Advocate could take it for granted that he would appear before the Court according to his whims and fancies or conveniences. It would be against professional ethics for a lawyer to abstain from the Court when the cause of his client is called for hearing

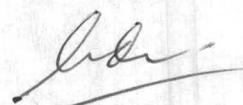
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or further proceedings. In appropriate cases, the Court itself could pass effective orders for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession and the defaulting Courts might also be contributory to the contempt of the Hon'ble Supreme Court.

2. Heard the applicant in person and perused the O.A. and the documents filed along therewith.

3. Bereft of unnecessary details, it is the applicant's case that while working as Stenographer Grade II in the Regional Office, Directorate of Field Publicity, Bhubaneswar, by order dated 23.1.2005 he was transferred to the Directorate of Field Publicity (Headquarters), New Delhi and he was relieved to join there by order dated 8.2.2005.

3.1 Upon his selection and appointment as Private Secretary in the Income Tax Appellate Tribunal and posting to Cuttack Bench, on deputation basis, the applicant was relieved by the Directorate of Field Publicity (HQ), New Delhi and joined ITAT, Cuttack, in August 2005. After working for about eight

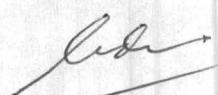


months, on his representation, the applicant was repatriated from ITAT to the Directorate of Field Publicity, New Delhi, where he reported on 29.5.2006.

3.2 Considering the domestic problems mentioned by the applicant in his representation dated 9.6.2006 (Annexure A/1), Respondent No.2, the Director General, Directorate of Field Publicity, New Delhi, by order dated 27.6.2006 (Annexure A/2) transferred the applicant to the Regional Office, Bhubaneswar.

3.3 While continuing as Stenographer Grade II in the Regional Office, Bhubaneswar, the applicant was promoted to the post of Administrative Officer and posted to the Regional Office, Jammu, vide order dated 20.11.2006 (Annexure A/3). On his refusal to accept the ad hoc promotion, he was debarred from being considered for such promotion for one year vide order dated 30.11.2006 (Annexure A/4).

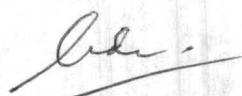
3.4 Memorandum dated 23.7.2006 (Annexure A/5) was issued by the Head of Office, DFP, Orissa Region (Respondent No.3) calling upon the applicant to explain his absence from duty from 13.7.2007 to 19.7.2007 without prior permission or



intimation. In the said Memorandum (Annexure A/5) the applicant was directed not to write roughshod to the instructions of Head of Office and was further advised to maintain decency, decorum and etiquette while dealing with superiors and fellow employees so that congenial atmosphere is not vitiated. Though the applicant is stated to have submitted his explanation on 25.7.2007, copy of the same has not been filed along with the O.A.

3.5 Thereafter Memorandum dated 1.8.2007 (Annexure A/6) was issued by the Deputy Director (Admn.), Directorate General of Field Publicity, Headquarters, New Delhi, calling upon the applicant to show cause as to why necessary action should not be taken against him as per rules for the alleged lapses indicated therein. It has been stated in the Memorandum dated 1.8.2007 that the Directorate is in receipt of various complaints from the Regional Office at Bhubaneswar against the applicant and that after taking an account of those reports the Directorate has noticed as follows:

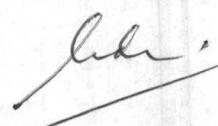
“.....Shri Parida is not paying due attention towards his office work/duties. He does not care about the instructions/advice of Head of Office. It is also reported that he is not punctual in attending office and hardly



3.6 The applicant in reply to the above Memorandum dated 1.8.2007 submitted his representation on 20.8.2007 (Annexure A/9) in which he made serious allegations against the Head of Office of the Regional Office, Bhubaneswar and prayed for an inquiry into the misconduct committed by his said higher authority.

3.7 While the matter stood thus, Office Order dated 10.9.2006 (Annexure A/8) was issued transferring the applicant from Bhubaneswar to Shillong with immediate effect and until further orders. Accordingly, the applicant was relieved of his duties in the Regional Office, Bhubaneswar, by order dated 11.9.2007 (Annexure A/9).

4. The applicant has challenged the order of his transfer on the grounds that he has been subjected to frequent transfers; that he has been transferred in mid-academic session; that the Respondent-authorities, while issuing the order of his transfer, did not take into consideration the problems that the applicant would be facing in the event of his transfer from Bhubaneswar,



for which he did not accept the promotion to the post of Administrative Officer and as a consequence, was debarred from being considered for such promotion for one year; and that the transfer order does not whisper that he has been transferred in public interest or exigency of service.

5. 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 utilize the services of an employee. Who should be transferred and where is a matter 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.

6. In the instant case, as stated earlier, the applicant has not stated that any of the provisions of the statutory rules or transfer policy guidelines have been violated by the



departmental authorities. The applicant admittedly remained absent from duty on and from 13<sup>th</sup> to 19<sup>th</sup> July 2007 without prior permission or intimation, for which he was called upon to explain, vide Memorandum dated 23.7.2007 (Annexure A/5). He is also alleged to have written roughshod to the instructions of the Head of Office, for which he was advised to maintain decency, decorum and etiquette while dealing with superiors and fellow employees. From Annexure A/6 it appears that the Head of Office, Regional Office, Bhubaneswar, has made complaints against the applicant. After examining those complaints, the Directorate of Field Publicity, Headquarters, New Delhi, has also called upon him to explain his conduct, vide Memorandum dated 1.8.2007 (Annexure A/6), in reply to which the applicant submitted his representation dated 20.8.2007 (Annexure A/7). While replying to the Memorandum dated 1.8.2007, the applicant appears to have made wild allegations against his higher authorities without least hesitation. From the materials available on record, it reveals that the departmental authorities have decided to transfer the applicant from Bhubaneswar to Shillong. The



Hon'ble Supreme Court in the case of *Union of India and others v. Janardhan Debanath and another*, 2004 SCC (L&S)

631 have held that transfers unless they involve any such adverse impact or visit the person concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and that utmost latitude should be left with the Department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

7. The applicant was transferred from Bhubaneswar to Delhi in February 2005. On his own option, he was selected and appointed as Private Secretary in ITAT and posted to Cuttack where after working for about eight months he was repatriated to his parent Department at Delhi on his own request. In consideration of his representation, the departmental authorities transferred him back to Bhubaneswar in June 2006. From all this, it is clear that he was not subjected to frequent transfers. Rather the departmental authorities were at all relevant time taking sympathetic view in allowing him to go on deputation in higher post and in transferring him back to

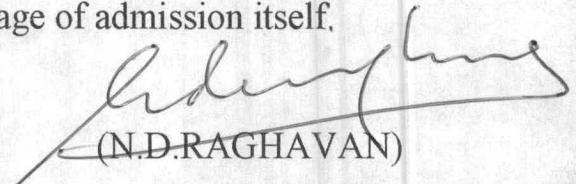
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Bhubaneswar on own request. In view of this, the contention of the applicant that he has been subjected to frequent transfers is untenable. The other contentions raised by the applicant, in the facts and circumstances of the case, have no merit.

8. In consideration of all the above, I do not find a *prima facie* case to have been made out by the applicant for admission of this Original Application.

9. Before parting with, I would like to observe here that the applicant, without making a representation to the competent authority, ventilating his grievances against the order of his transfer, has straightaway approached this Tribunal with a prayer to quash the transfer order. Therefore, in the event the applicant, after joining at the new place of his posting, i.e., Shillong, craves the indulgence of the Director General, Directorate of Field Publicity, New Delhi (Respondent No.2), if so advised, by making a *well-mannered and reasoned* representation with humble prayer for his transfer back to Bhubaneswar, I have no hesitation, the said authority, who has been accommodating the applicant earlier, will *also* not fail to be sympathetic to the applicant. *especially circumstances permitting him.*

10. With the aforesaid observations, the Original Application is rejected at the stage of admission itself.

  
(N.D.RAGHAVAN)

VICE-CHAIRMAN

fix for pronouncement  
on 21.09.07 at 230PM  
*ltd.*