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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 04/03/2008

O.A. No.76 of 2007

K.Laxmidhar Patra ... Applicant

versus

Union of India & Ors. ... 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 CAT
or not? *yes*


(M.R. MOHANTY)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
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Date of order: 04/03/2008

PRESENT:

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN

In the Matter of:

O.A. No .76 of 2007

K.Laxmidhar Patra ... Applicant

versus

Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

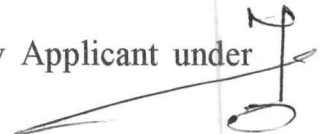
For Applicant: : M/s.S.K.Mishra, M.R.Dash,
A.Kejriwal, S.K.Samantaray, Ms.S.Mohanty,
Counsel.

For Respondents: Ms.S.L.Pattnaik, Counsel

ORDER

Per MR.M.R.MOHANTY, VICE-CHAIRMAN (J):

Rejection of the prayer for transfer from Berhampur to
Bhubaneswar Postal Division (as sought for by Applicant under



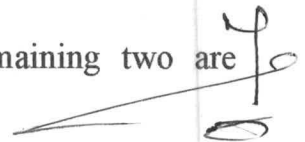
Rule 38 of P&T Manual, Vol. IV under Annexure-16 dated 11.01.2007) is the subject of consideration in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985. According to Respondents (as disclosed in sub para (i) (ii) and (iii) of para 3, page 3, of the counter filed on 13.09.2007) the prayer of applicant for his transfer under Rule 38 of P&T Manual could not be considered by the CPMG Orissa, Bhubaneswar for the following reasons:

- (i) In this application for transfer under Rule-38 to Bhubaneswar, the applicant has mentioned that he seeks transfer on the ground of severe ill-health of his wife and non-availability of appropriate specialized medical treatment at Berhampur (GM). The reasons for his transfer does not appear to be convincing as there is medical College Hospital at Berhampur which is equipped with facilities for treatment of serious ailments;
- (ii) There is a ban on filing up of 2/3rd of vacant posts in Postal Divisions and the post rendered vacant as a result of transfer under Rule-38 is not automatically filed up. Due to operation of ban only one vacancy out of three is filed up after approval by Screening Committee and the remaining two are abolished. In view of this, transfer under Rule-38 is not encouraged.
- (iii) There is already good number of vacancies in Postal Assistant cadre in Berhampur (GM)

Division and it has become unmanageable to run the Postal Service with the available manpower. Transfer of the applicant from Berhampur (GM) Division to Bhubaneswar at this juncture will further deteriorate the position of Berhampur (GM) Division.

2. Learned Counsel for the Applicant has focused several points in support of the illegality in rejecting his prayer for transfer under Rule 38 of P&T Manual Vol. IV. But those arguments are of no help to him because it is settled law that the transferring authority empowered to decide who should be transferred/posted where and at what point of time and no court/tribunal should ordinarily interfere with the decision of the administration.

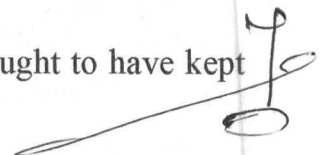
3. Distinguishing feature is noticed in this case that, according to the Respondents, the Applicant could not be accommodated as there was a ban on filing up of $2/3^{\text{rd}}$ of vacant posts in Postal Divisions and the post rendered vacant as a result of transfer under Rule-38 is not automatically filed up. Due to operation of ban only one vacancy, out of three, is filed up after approval by Screening Committee and the remaining two are



abolished. In view of this, transfer under Rule-38 is not encouraged.

4. The above stand of the Respondents seems contrary to record produced by the Applicant through affidavit dated 05.03.2007 showing that soon after the order of rejection, the Respondents (vide order dated 31.01.2007) accepted the request of other PA/SA and transferred them from Berhampur (GM) Division to Bhubaneswar Division under Rule 38 of P&T Manual.

5. The above Rule gives right to an employee to seek transfer from one division to other. In the matter of acceptance of request of transfer under Rule 38 of P&T Manual, certainly the authority cannot be allowed to adopt pick and chose manner of selection. More worse the situation in not bringing out the correct picture to enable the Courts/Tribunal to take a decision on a grievance of an employee. Equity helps to those who approaches the Court with clean hand. Equally, it is settled principle that discretionary power cannot be allowed to be utilized in-discriminatorily. If there was ban, the authority ought to have kept



his grievance pending with intimation that his grievance would be considered soon after the ban is lifted. Rejection of his grievance and subsequent accommodation given to others cannot be allowed to stand in the touch stone of judicial scrutiny. However, Silence of the Respondents on the affidavit filed by Applicant long back on 05.03.2007 renders this Tribunal to take the view that there has been miscarriage of justice in the decision making process when the authority rejected the claim of Applicant.

6. In the light of the discussions made above, since there has been miscarriage of justice in the decision making process, the order of rejection dated 11.01.2007 is hereby quashed and the matter is remitted back to the authorities for reconsideration of the grievance of applicant in existing or future vacancy, for his transfer in accordance with Rule 38 of P & T Manual Vol. IV.

7. As a consequence, this case stands allowed. No costs.


(M.R. MOHANTY)
VICE-CHAIRMAN