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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.No. 179 of 2008

Cuttack, this the 11th day of September, 2008

Biswambar Patra

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 of CAT or not?

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

(K.THANKAPPAN)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.No. 179 of 2008

Cuttack, this the 11th day of September, 2008

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

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Biswambar Patra, aged about 59 years, son of late Suna Patra of village Ghutukeshari,
P.O. Naranpur, P.S. Town (Keonjhar), Dist.Keonjhar, at present working as Head
Postmaster, Keonjhargarh Head Post Office, Twon/Dist.KeonjharApplicant
For applicant - M/s K.Panigrahi,S.B.Das & S.R.Debata

Vrs.

- 1) Union of India, represented by the Director General of Posts, Dak Bhawan,
New Delhi.
- 2) Chief Postmaster General, Bhubaneswar, Dist.Khurda.
- 3) Postmaster General, Sambalpur Region, Town/Dist.Sambalpur.
- 4) Assistant Director of Postal Services, Officeof the Postmaster General,
Sambalpur Region, Twon/Dist. Sambalpur
- 5) Superintendent of Post Offices, Keonjhar Division, Keonjhar Garh,
Town/Dist. Keonjhar Respondents
For respondents - Mr.U.B.Mohapatra, SCGSC

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ORDER

SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

Transfer being an incidence of service, under normal circumstances,
Courts/Tribunals are reluctant to interfere with order of transfer, unless it is evident
that the order is vitiated by mala fide or there is infraction of principles governing
transfer and posting so as to infringe the fundamental right guaranteed under
Article 16 of the Constitution of India.

2. The applicant challenges an order of transfer, dated 10.3.2008 (Annexure
1) by which he has been transferred from his present place of work, Keonjhar Head
Office to Jharsuguda H.O., alleging that the impugned order is vitiated by mala
fide and has been issued on the eve of his retirement. Further, the applicant's case



is that he has got some personal grievances which at present prevent him from moving from the present station to the other. He has urged in the application that his wife and daughter are suffering from psychiatric problems and are under the continuous treatment of doctors, and that if the transfer order is acted upon, the entire treatment of his wife and daughter will be disturbed. To support this contention, the applicant produces Annexure 3 series, the xerox copies of prescriptions and advice of the doctors who are treating his wife and daughter. Yet another ground also has been urged in the application that his normal tenure, both station-wise and Division-wise, has not been completed. Hence the present transfer to a distance of 300 K.Ms. from the present station has to be interfered with by this Tribunal.

3. When the matter came up for admission, this Tribunal passed an ad interim order of stay of the transfer order on 25.4.2008. Thereafter when the matter came up for extension or otherwise of the ad interim order, it was objected to by the learned counsel appearing for the Respondents and MA No.329 of 2008 was filed for vacation of the ad interim order of stay passed by this Tribunal. This Tribunal, on hearing the parties, confirmed the order of stay on 26.6.2008. The interim order was taken before the Hon'ble High Court of Orissa by the Respondents in W.P. (C) No. 10811 of 2008. The Hon'ble High Court, on hearing the parties, without interfering with the order passed by this Tribunal, by order dated 11.8.2008 directed this Tribunal to dispose of the O.A. within a period of one month from the date of the order. In the light of the direction issued by the Hon'ble High Court, the matter has been posted for hearing.



4. Heard the learned counsel appearing on either side and perused the documents produced in the O.A.

5. The learned counsel appearing for the applicant, while reiterating the grounds urged in the O.A., submits that the applicant is now working at Keonjhar Head Office in the cadre of HSG I and has to retire within 16 months and in the meanwhile he has been served with Annexure 1 transfer order. The learned counsel further submits that Annexure 1 has been issued with mala fide intention to show undue favour to one of the subordinates of the applicant, named Maheswar Sahoo, who has been working as LSG, so as to enable him to officiate as Head Postmaster at Keonjhar Head Office. The learned counsel further submits that even though at Keonjhar Head Office there are two posts of HSG I available, the only incumbent, i.e., the applicant, holding one of the above posts is now ordered to be transferred keeping the other post still vacant. The learned counsel further submits that the applicant has not completed his tenure of transfer, both station-wise and division-wise. That apart, he has to retire immediately. The learned counsel also submits that though the impugned order has been issued at the prefix of public interest, the order is not in accordance with the transfer and posting guidelines and the transfer will cause irreparable loss and injuries to the applicant.

6. In reply to the contentions of the learned counsel for the applicant, the learned Standing Counsel appearing for the Respondents Shri U.B.Mohapatra submits that the transfer under Annexure 1 is necessitated only in public interest and has not been issued with any mala fide intention. To substantiate this contention, the learned counsel for the Respondents relies on Annexures R/1



and R/4 letters of the Assistant Director General (SPN) and the Director (SPN) of the Department of Posts respectively. Further, the learned Standing submits that the allegation that the order of transfer is vitiated with mala fide intention is not proved and it is not correct. However, relying on paragraph 5 of the counter filed on behalf of the Respondents, it is stated that even if it is conceded for the sake of argument (without admitting) that Sri Maheswar Sahu holds the charge of Postmaster, Keonjhar H.O. by virtue of his seniority in Keonjhar HO after relief of the applicant, Shri Sahu will not get service/monetary benefit as he is not eligible being not an approved HSG II official rather it would be an extra burden for him without remuneration. Further, the learned Standing Counsel submits that as there is no approved HSG II official available, the Keonjhar Head Office is having one Postmaster and another Deputy Postmaster. Even if the applicant is transferred the work of Deputy Postmaster (HSG I) will be managed by Sri Maheswar Sahoo, the next senior official. Further, the learned Standing Counsel submits that the applicant is transferred to Jharsuguda to fill up the vacant post at the transferred station and even if the applicant is transferred, it will not affect the official work at the Keonjhar Head Office as the Postmaster of the Head Office is not vested with the power of supervision over the Sub Offices and Branch Offices attached to it. The job of Postmaster is purely in operative nature and confined to Head Office only. His duty and responsibility is to exercise overall supervision over the functioning of the Head Office and even he is not directly responsible to any eventuality of other Branches of H.O. as there are other supervisors such as APM (A/C), APM(Mails), APM HO(SB), APM SO(SB) and APM Counter, etc. to assist

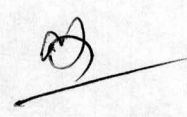


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him in day to day work. Hence the transfer of the applicant is purely on larger public interest and not with any mala fide intention, as alleged by the applicant.

7. In the light of the contentions raised by the learned counsel on either side and on perusing the records, the question to be decided in this O.A. is whether there exists a case in favour of the applicant for quashing Annexure 1 order or not.

8. It is an admitted fact that the applicant is the Postmaster at the Keonjhar Head Office and he is on the eve of his retirement. He has to retire within 16 months. The general trend of Tribunals and Courts is that if a Government employee is on the eve of retirement, he should not be disturbed, unless such administrative urgency or necessity is there. In this context, it is to be noted that the applicant has a personal ground for challenging the order at this stage as his wife and daughter are suffering from psychological problems and they are under continuous treatment, as evidenced from Annexure 3 series, the xerox copies of prescriptions of doctors. Whatever may be the personal difficulties, this Tribunal is now impressed by the fact that the applicant has to be retired within a short time and on this ground, we are of the view that the order has to be set aside.

9. The second ground urged by the learned counsel for the applicant is that the order is issued mala fide. In this context, it has to be noted that the specific allegation of the applicant is that one of his juniors, one Mahesh Sahoo is working at the Keonjhar Head Office and if the applicant is transferred, he will be posted as HSG II to work in the place of the applicant. Admittedly, the said Sri Sahoo is junior to the applicant. It is stated in the counter in paragraph 5 that even if it is conceded for the sake of argument (without admitting) that Sri Sahoo holds charge of Postmaster, Keonjhar H.O. by virtue of his seniority after relief of the applicant, he will not get service/monetary benefit, as he is not eligible being not an approved



HSG II official. Mala fide intention of issuing an order can be assessed from the circumstances under which the order impugned has been issued. In this context, the contention of the learned counsel for the applicant is that the applicant has not completed his tenure of transfer in both station-wise and division-wise. As per the decision of the Hon'ble Apex Court, reported in a catena of cases, an infringement of transfer guidelines initiated and followed in the Department may make such order of transfer questionable in the Court of law. In this context, with regard to the allegation of the applicant that the transfer is beyond the transfer guidelines, only answer given by the Respondents is that the transfer in question is ordered only on the basis of Annexures R/1 and R/4. A perusal of Annexures R/1 and R/4 would show that the vacant post of HSG I shall be filled up as per the letter issued by the Department of Personnel & Training, and there is thus no reason to transfer the applicant and fill up such vacancy.

10. The next question to be considered is whether the order under challenge is sustainable in the light of the above contentions raised by the applicant. On considering all aspects of the case and the stands taken by the Respondents in the counter, we are of the view that the applicant succeeds in this O.A. Consequently, we set aside Annexure 1 order.

11. In the result, the Original Application is allowed as above. No order as to costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER