

A.K.Mohanty ... Applicant
Versus
UOI & Ors. ... Respondents

Order dated 18th September, 2009.

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THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)

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THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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Shri A.K.Mohanty (Applicant in this OA) being aggrieved with the order dated 26.03.2008 at Annexure-A/6 where under he has been transferred from DDK, Bhubaneswar to DDK, Kolkata against an existing vacancy. He prays for retention in the existing station and makes out a case in terms of the policy guidelines relating to transfer/posting as given in Annexure-A/1. He built up his case as per clause (ix) of the transfer guidelines where under a person with the longest continuous stay at the station irrespective of the rank held by him earlier should ordinarily be transferred first and he being not the person in the grade having longest stay at DDK, Bhubaneswar, he ought not to have been disturbed. It is the Respondent No.7 (Smt. Kalpana Parida) who has been continuing at DDK, Bhubaneswar prior to the posting of the Applicant there, even without facing any transfer ought to have been disturbed. His further stand is that though he has given option for his transfer to three places including Kolkata it was sometime in 2006 and thereafter certain developments including ailment of his wife have taken place. In view of the

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above he prays for being retained at DDK, Bhubaneswar by quashing the impugned order of transfer.

2. The main substance of the counter filed by the Respondents in this case is that the post in question is having all India transfer liability. The applicant has completed his tenure at DDK, Bhubaneswar and, therefore, considering his option he was transferred and posted to Kolkata. Their contention is that there being no miscarriage of justice in the decision making process of the matter, this OA is liable to be dismissed.

3. Through rejoinder, applicant contended that there being no whisper in the counter in regard to Respondent No.7 and separate counter having not been filed by the Respondent No.7 in spite of notice of this Hon'ble Tribunal being duly served on her the fact that she has been continuing ^{is} ~~because~~ of her influence. As such while reiterating the stand taken in the OA, he stated that as the transfer order was an outcome of colourable exercise of power, the same needs to be quashed.

4. Heard Mr. Ganeswar Rath, Learned Counsel appearing for the Applicant and Mr. P.R.J.Das, Learned Additional Standing Counsel appearing for the Respondents and perused the materials placed on record.

5. In course of hearing it was contended by Learned Counsel for the Applicant that as the Applicant has less than three years to retire and as per the transfer guidelines employees having three years to go before retirement are not liable to be transferred and the applicant has already made

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representation to his authority seeking reconsideration of the order of transfer on the above ground and that nothing has been stated in regard to the Respondent No.7 in the counter filed by the Official Respondents and there being no counter filed by the Respondent No.7 the order of transfer of Applicant is liable to be quashed and if at all hands are necessitated at DDK, Kolkata it is Respondent No.7 who can be sent on transfer but certainly not the Applicant. Accordingly, Learned Counsel for the Applicant strongly insisted for quashing the order of transfer of the Applicant. This submission of the Learned Counsel for the Applicant was vehemently opposed by Mr. Dash, Learned Additional Standing Counsel appearing for the Respondents by reiterating that the Applicant cannot avoid going on transfer by taking the ground of long continuance of Respondent N.7. Transfer guidelines are advisory in nature violation of which cannot be a ground to quash the order of transfer of an employee made in administrative exigency/public interest. Further it was contended by him that at the time the transfer order was passed the applicant was having more than three years and the applicant has been continuing in the present post by the stay order granted by this Tribunal. As such, by now the applicants having less than three years of service cannot be a ground to quash the order of transfer.

6. It is not in dispute that the applicant is holding a transferable post. It is trite law that Judicial Review of the administrative decision especially in the matter of transfers which are made in public interest and for administrative

reasons is limited and it has been held by the Hon'ble Apex Court in a number of cases that unless the transfer orders are made in violation of any mandatory, statutory rule or on the ground of mala fide, judicial review of the said order of transfer is unwarranted. A Government servant holding a transferable post has no vested right to remain posted at one place or the other; he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. It has further been held by the Hon'ble Apex Court that if the Tribunal continues to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. It is also settled position of law that transfer order would cause personal difficulties is no ground for the Tribunal to interfere in the order of transfer; as these are matters to be looked into by the authorities keeping in mind the public interest and administrative exigency.

7. In the present case the earlier order of transfer of the applicant to Itanagar has been modified and he is posted to DDK, Kolkata on his own option and request. The issue that Respondent No.7 is having longest stay but has not faced any transfer is a matter to be looked into by the competent authority

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and this Tribunal being not the appellate authority cannot interfere in the order of transfer which has been made in public interest merely because guidelines envisage that the person having longest stay, in case of transfer, shall have to be transferred first. In regard to mala fide exercise of power we may state that except a bald allegation no such incriminating material is placed before us and as such we refrain from taking cognizance of the said allegation.

8. In view of the above, we are not inclined to interfere in the present order of transfer of the Applicant. Hence this OA stands dismissed. No costs.

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(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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(C.R. MOHAPATRA)
MEMBER (ADMN.)