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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

OA No.236 of 2008
Cuttack, this the 14th day of January, 2009

Dipak Kumar Saha Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?

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(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

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C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Dipak Kumar Saha, aged about 43 years, Son of Adinath Saha at present working as Upper Division Clerk, Aviation Research Centre, Charbatia, At/Po. Charbatia, Dist. Cuttack.

.....Applicant

By Advocate :M/s.Rabi Narayan Mishra, Dillip Kumar Mohanty
- Versus -

1. Union of India represented through its Special Secretary, Aviation Research Centre, ARC Headquarters, Cabinet Secretariat, East Block, VRK Puram, New Delhi-110 066.
2. The Deputy Director (Administration), ARC, Charbatia, At/Po. Charbatia, Dist. Cuttack.
3. Smt. Bandana Pattnaik, UDC, ARC, Charbatia, Dist. Cuttack.

....Respondents

By Advocate :M/s. D. R. Ray, B. K. Jena, for Respondent No.3
Mr.U.B.Mohapatra, SSC.

O R D E R

Per- MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant is an UDC of the Aviation Research Centre presently posted at Charbatia in the District of Cuttack. Vide order dated 07.05.2008 he was transferred and posted to ARC Sarsawa, Saharanpur (U.P). By filing representation before his authority he prayed for cancellation of the said representation on the ground that he was not the senior most employee of the ARC Charibatia so as to face such transfer.

1 Because of his personal difficulties to be caused in case the transfer order is given effect to and apprehending relieve before any decision is taken on his representation, he approached this Tribunal in OA No. 209 of 2008. The said OA was disposed of by this Tribunal on 26.05.2008 by directing the Respondents to take a decision on his representation and till such time the order of transfer of the Applicant shall be kept in abeyance. Based on such direction of this Tribunal, the Respondents considered and rejected the representation of the Applicant vide order under Annexure-A/8 dated 12.06.2008. Being aggrieved by such order of rejection under Annexure-A/8, once again he has approached this Tribunal in the present Original Application filed under section 19 of the A.T. Act, 1985 seeking to quash the order of transfer under Annexure-A/5 as also the order of rejection under Annexure-A/8 dated 12.06.2008.

2. Respondents 1&2 by filing counter have opposed the prayer of the applicant. It has been stated that there has been no miscarriage of justice in the decision making process of transferring the Applicant from ARC Charbatia to ARC Sarsawa. The Applicant is holding a transferable post and as such the treatment of his old father and education of two sons are not enough grounds to stall the transfer when the same has been made in public interest. So far as retention of Respondent No.3 it has been stated in the counter that although she was within the zone for rotational

transfer in the year 2008 on consideration of her representation that she had undergone a major operation in spinal cord, her brother expired last year in cancer etc. the proposal for her transfer was postponed to next rotational transfer of 2009. They have also strongly rebutted the allegation of *mala fide* and favouritism in the order of transfer of the Applicant and accordingly prayed for dismissal of this OA. Respondent No.3 has also filed a separate counter in which while reiterating the factual aspects placed in the counter of the Respondent No.1&2, she has taken the stand that who should be posted where and at what point of time is a policy decision of the Government and the Applicant having joined in a transferable post should not have raised any objection to carry out order of transfer.

3. During hearing, it has been urged by the Learned Counsel for the Applicant that when a policy so far as transfer and posting of employees of ARC was framed by the authority, the same has universal applicable to everybody, if on consideration of the representation of Respondent No.3 she could be retained in ARC till 2009, with the same difficulties why the Applicant should not be retained by the authority. By this, the Respondents have committed injustice to the Applicant which is against all canons of justice, equity and fair play besides being opposed to the mandate provided in Article 14 and 16 of the Constitution that no

Government servant should be discriminated against. He has pointed out that the present order of transfer not only caused dislocation of the study of his children but also caused disruption to the treatment of his old parents. Besides the above, by drawing our notice to the paper clipping of the sad demise of his brother in a road accident he has pointed out that the applicant being the only male active member of his family, after the death of his elder brother the entire burden of the family has been shifted to him and as such if he is transferred, there would be dislocation and disharmony in his family. Accordingly he has prayed for a direction to the Respondents to take a sympathetic view on the prayer of the applicant for his retention at ARC, Charbatia.

4. On the other hand Learned Counsel appearing for the Respondents strongly opposed the stand of the Applicant by stating that once the applicant joined in a post having all India transfer liability he cannot resist his transfer on the grounds raised in this case; because for the alleged personal problems it is not possible to keep him for ever in the ARC, Charbatia while ordering transfer of other employees. Further it has been argued that one cannot claim discrimination in the matter of transfer as the same is made in considering several factors in public interest including the efficiency of an employee. Hence Learned Counsel for the Respondents has vehemently prayed for dismissal of this OA.

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5. We have considered the rival submissions of the parties and perused the materials placed on record. We may record that time without number the Hon'ble Apex Court deprecated the interference of the Courts/Tribunal in the order of transfer of an employee. It has been held by the Hon'ble Apex Court in the case of **Shilpi Bose vrs. State of Bihar**, reported in AIR 1991 SC 532- where a competent authority issues transfer order with a view to accommodate a public servant the same cannot be interfered with by the court; in the case of **Union of India vrs. H.N.Kirtania** (1989 (3) SCC 445), GUJURAT Electricity Board vrs. Atmaram Sungomall Pashani reported in AIR 1989 SC 1433-transfer of an officer holding a transferable post cannot be objected to. Government is the best judge to decide to distribute and utilize the services of an employee; in the case of **State of Orissa vrs. Kishore Chandra Samal** 1992)2) Scale-251 -the principle has been decided that the transfer within the cadre with identical responsibilities no objection can be made against the order of transfer; in the case of **Union of India vrs. S.L. Abbas** AIR 1993 SC 2444 - who should be transferred where is a matter for the appropriate authority to decide; in the case of **State of Madhya Pradesh vrs. S.S.Kourav** reported in AIR 1995 SC 1056 -Courts or Tribunal is not the Appellate Authority to decide on transfer of the officers made on administrative grounds. The wheels of the administration should be allowed to run smoothly and the Courts or Tribunals are not expected to

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interdict/interfere the working of the administration system and in the case of **Union of India vrs. N.P.Thomas** reported in **AIR 1993 SC 1605** if the transfer is not in violation of any statutory rule no vested right to employee to continue in his original post. Yet in the case of **Director of School Education Madras and others vs. O.Karuppa Thevan and others**, 1995 (I) ATT (SC) 21 it was suggested by the Hon'ble Apex Court that transfer during mid-academic session should be avoided. In the instant case on our repeated query of any inconvenience to be caused if the applicant is allowed to be retained till the end of the present mid-academic session there was no satisfactory answer from the side of the Respondents neither in the counter nor during hearing of the matter.

6. When the factual scenario is examined in the background of the legal principles set out above, the inevitable conclusion is that there has been no miscarriage of justice in the decision making process of the matter requiring this Tribunal to interfere in the order of transfer or of the matter in the order of rejection of the representation of the Applicant. But this being an order of transfer during mid academic session of the education of the children keeping the observation of the Hon'ble Apex Court in the case of **O.Karuppa Thevan** (supra), we direct the Respondents 2&3 to retain the Applicant at ARC, Charbatia till the end of the present academic session.

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7. With the aforesaid observation and direction, this OA stands
1 disposed of by leaving the parties to bear their own costs.

Kappan

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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