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O.A. No. 110 of 2008

CORAM:

Hon'ble Mr. M.R.Mohanty, Vice-Chairman

Order dated: 19.02.2008

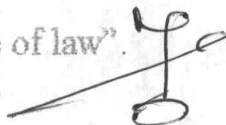
Applicant, having faced a transfer from Bolangir(Orissa) to Bhusawal, had represented to the Authorities unsuccessfully and, thereafter, he has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant has alleged that there were violation of the transfer guidelines by the Respondents. It is the case of the Applicant that before transferring him, he should have been given an opportunity to have his say in the matter (by way of exercising option) and that he should not have been disturbed during mid-academic session. By filing representation, the Applicant pointed out to the authorities that he has got a dependent mother of 75 years of old and an ailing wife who is in bed-ridden condition. He has also pointed out that his children are taking education in Oriya Medium and on transfer the future of the children will be jeopardized.

3. Mr. U.B.Mohapatra, Ld. Sr. Standing Counsel for the Union of India; on whom a copy of this O.A. has already been served, pointed out that the transfer guidelines are mere executive instructions for guidance of the

Respondent Department and confers no right on the Applicant/Govt. servant.

4. Facing with the aforesaid objection, Mr. G.Rath, Ld. Counsel appearing for the Applicant drew attention to the case of "P.S.Murty vs Chief General Manager, State Bank of India" reported in 1991(1) OLR 34 and stated that in order to prevent officers who continue for a long period at one place and to facilitate their shifting to other places, instructions (based upon a public policy, of preventing officers to grow vested interest at particular places by remaining there from a long period) were issued and that "Circulars and instruction issued by employer (laying down conditions regarding transfers and posting of staff) are not merely for purpose of internal guidance of the department without any obligation on their part to follow the same when a plea of discrimination or non-compliance is raised and that administrative instructions advised to regulate action of authorities vested with power to administer, must be held to be necessary of compulsory compliance by the administrative authorities (except in the event of any just exception) and that existence of a rule either statutory or administrative requires its uniform application to all governed by it as to permit a selective approach would openly invite a charge of discrimination. Departure from acceptance policies and justification thereof under the camouflage of administrative immunity is neither acceptable nor palatable to constitutional jurisprudence founded upon rule of law".



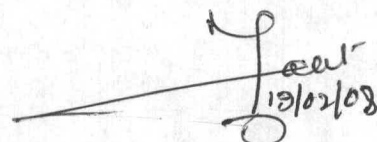
5. Mr. Rath has pointed out that several persons, having longer period of stay at a particular station/post, have not been disturbed by the Respondents; whereas the Applicant has been disturbed.

6. While following guidelines, the authorities are best person to decide as to who should be posted where but while doing that a healthy personal management requires to ensure that there remains no heart-burning and the guidelines are implemented uniformly in respect of each and every person in employment.

7. In the aforesaid premises, without entering into the merits of the matter, this O.A. is disposed of by remitting back the matter to the Respondents to reconsider the grievances of the Applicant, as raised in the present O.A., by treating a copy of this O.A. as representation of the Applicant, and pass a reasoned order expeditiously.

8. While considering the case of the Applicant, the Respondents should do well in allowing the Applicant to continue at Bolangir/the present place of posting till the end of present academic session and on consideration of the option of the Applicant (to be furnished in terms of guidelines), they may consider his case to give him posting, if not in Bolangir, then at any nearby place.

9. Send copies; of this order to the Respondents, along with copies of this O.A., and free copies of this order be handed over to the Ld. Counsel appearing for both the sides.

 J. S. Jaiswal
12/02/08

VICE-CHAIRMAN