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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Date of order: 16-09-2010

PRESENT:

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

In the Matter of:

O.A. No.415/2010  
Kishore Ch. Mohanty ... Applicant  
Versus  
Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

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For Applicant: M/s.N.R.Routray, S.Mishra, T.K.Chowdhury, Counsel  
For Respondents: Mr.U.B.Mohapatra, SSC.  
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ORDER

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

The order under Annexure-A/4 dated 2<sup>nd</sup> August, 2010 for transfer of the applicant in his present capacity of PEX from AIR Cuttack to AIR, Rourkela has been challenged being opposed to the policy of transfer under Annexure-1; especially clause (xxi) providing that there shall be no transfer within the period of three years of retirement and if such transfer is unavoidable then efforts shall be made to post him nearer to his home town and clause (xxv) providing transfers will, as far as possible, be synchronized with the end of the academic year so that the education of children does not suffer. It is the contention of the Applicant that his date of birth being 28<sup>th</sup> January, 1953 he will be retiring on reaching the age of 60 years w.e.f. 31<sup>st</sup> January, 2013 and as his son will be appearing +2 final year examination in the event of his transfer he can neither shift his family to Rourkela nor can he live there at Rourkela alone being a heart and high BP patient. As per the provision made in para 2 of the policy of transfer, it should be implemented as objectively as possible and if any exception is required to be made, it should be got approved at the higher level in the Directorate. According to the

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Applicant, without obtaining any such approval from the Respondent No.1; more so when his transfer is in deviation of the policy of transfer, the Respondent No.2 transferred him to such far away place from his present posting and as such, the order of transfer being without competence and jurisdiction the same is liable to be set aside. In support of his claim he has taken many more grounds but according to me as those grounds are formal in nature and has been taken as a matter of routine, it is not necessary to record those stands taken by the Applicant. In this connection Learned Counsel for the Applicant has relied on the decision of this Tribunal dated 23.07.2010 in OA No. 301 of 2010 (Prashanta Chandra Panda v Union of India and others).

2. Respondents filed their counter giving the details of the transfers and postings undertaken by the applicant at various stations till the present order of transfer and as usual by placing reliance on various decisions of the Hon'ble Apex Court in support of their stand that since transfer is an incidence of service this Tribunal should not interfere in it.

3. Mr. Routray, Learned Counsel appearing for the Applicant, by drawing my attention to the provision made in clause xxi and Paragraph 2 of the transfer policy under Annexure-A/1 has contended that he does not dispute that Respondent No. 2 is the transferring authority in so far as PEX of the AIR is concerned but in this OA he questions the authority of the Respondent No.2 being an authority lower than the authority who evolved the policy of transfer, in passing the present order of transfer in violation of the provision made in clause xxi as the approval of the Respondent No.1 as provided in paragraph 2 of the said order of transfer has not been obtained. In other words it is the contention of the Learned Counsel for the Applicant that the policy of transfer has the statutory force and has binding effect in so far as Respondent No.2 and the Applicant are concerned and, as such, deviation from the principle having

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wider repercussion could not have been made by Respondent No.2 without the approval of the Respondent No.1. It was also contended by him that for the reason of the transfer having less than three years, this Tribunal in OA No. 301 of 2010 filed by P.C.Panda and others quashed the order of transfer by directing continuance of the applicant therein at AIR, Cuttack. The said order still holds good in the field. As such by applying the principle of the earlier order of this Tribunal in the case of P.C.Panda (supra) of this Tribunal and in view of the law laid down by Their Lordships of the Hon'ble Apex Court that it is the cardinal principle for all the courts to follow the precedent, the present order of transfer is liable to be set aside. Besides the above, it was contended by the Learned Counsel for the Applicant that the home town of the applicant is at Cuttack. When the Respondent No.2 brings employees from outside stations in view of their short span of retirement, sending the applicant to such far away place is sheer discrimination/in violation of Article 14 & 16 of the Constitution of India. This apart, it was contended that the son of the applicant will be appearing his +2 final year examination during March, 2011. The applicant himself is a heart and BP patient. For the above reasons neither he can take his family to Rourkela nor can he live alone there in absence of any assistance. Accordingly, it has been stated that as none is posted in place of the applicant the order of transfer needs to be quashed by directing the Respondents to allow the applicant to continue at AIR, Cuttack.

On the other hand Mr. Mohapatra, Learned Senior Standing Counsel appearing for the Respondents vehemently opposed the above stand of the Applicant stating that irrespective of the grounds, this being a matter of transfer which has to be decided by the authority manning the Department, this Tribunal should not interfere in the same.



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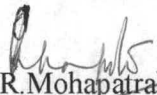
4. I have considered the rival submissions of the parties and perused the materials placed on record. Fact remains that the applicant has less than three years to superannuate from service. Also it is a fact that the present order of transfer issued by the Respondent No.2 is in contravention of the provision made in clause xxi of the transfer policy under Annexure-A/1 without obtaining the approval of the Respondent No.1 as provided in paragraph 2 of the said policy of transfer. Therefore, though Respondent No.2 is the competent authority in so far as ordering transfer and posting of the PEXs, exercise of such power must be within the parameter of the policy of transfer and any deviation must be with the prior approval of the Respondent No.1. Since present transfer has been issued in contravention of the provisions of clause xxi, by the Respondent No.2 without prior approval of the Respondent No.1 as required under Annexure-A/1, it can safely be held that the order under Annexure-A/4, in so far as the applicant is concerned, is without authority and hence a nullity. This is because the transfer policy framed by the Government/Respondent No.1 must be adhered to by the subordinates and if there would be any deviation from the principle enumerated above, necessary approval of the competent authority i.e. Respondent No.1 is a pre condition. As per the law decided by the Hon'ble Apex Court in the cases of **State of Uttar Pradesh and others v Gobardhan Lal**, 2001 (11) SCC 402 and **Gujarat Electricity Board and another v Atmaram Sungom Poshani**, AIR 1989 SC 1433, transfer of an employee being the prerogative of the authorities the Tribunal should not **normally** interfere with the same except the transfer order shown to be vitiated by *mala fides* or in violation of any statutory provision or having been passed by an authority not competent to pass such an order. For the discussions made above, this case comes within the scope and ambit of the decisions of the

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Hon'ble Apex Court, referred to above, enabling this Tribunal to interfere in the present order of transfer. It is trite law that **(SI Rooplal and others vrs. Lt. Governor through Chief Secretary Delhi and others, (2000) 1 SCC 644)** that the precedents are to be followed by the Tribunal. This Tribunal quashed the transfer of another employee of AIR, in OA No.301 of 2010 dated 29.6.2010 [P.C.Panda v Union of India and others.] on the ground of his transfer made within three years of his retirement without obtaining the prior approval of Respondent No.1. I do not find any reasonable ground to differ with the view already taken in the aforesaid case. Hence, by following the decision in the case of P.C.Panda (supra) the order of transfer of the applicant under Annexure-A/4 is hereby quashed.

5. With the aforesaid observation and direction this OA stands allowed. No costs.

  
(C.R. Mohapatra)  
Member (Admn.)