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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 15-09-2010

PRESENT:

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

In the Matter of:

O.A. No.416/2010

P.C.Ray

... Applicant

Versus

Union of India & Ors.

... Respondents

(For Full details, see the enclosed cause title)

.....
For Applicant: M/s.S.K.Ojha, D.K.Mohanty, S.K.Nayak,

For Respondents: Mr.U.B.Mohapatra, SSC.
.....

ORDER

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

The order under Annexure-A/3 dated 2nd August, 2010 transferring the applicant and Respondent No.4 vice-versa and consequently the order of relieve under Annexure-A/4 dated 04.08.2010 have been challenged by the Applicant in this Original Application filed under section 19 of the A.T. Act, 1985 with prayer to quash both the orders and direct the Respondents to allow him to continue at AIR, Cuttack.

2. The stand of the Applicant in support of his prayer is that he entered to the service of the Respondents on 21.03.1977 as Jr. Librarian in the All India Radio, Cuttack. Thereafter he was promoted on 14.01.1983 to the post of Transmission Executive (TRES) and consequently posted to AIR, Cuttack. Then he was promoted to the post of Programme Executive (PEX) on 21.2.1994 and posted to AIR, Jeypore (Hard Station). During September, 1996, he was transferred to AIR, Cuttack and again during May, 2003 he was transferred to AIR Keonjhar (Hard Station). In August, 2005 he was brought back to AIR, Cuttack in which post he has been continuing now. His date of birth being 4th March, 1953, he is to retire on reaching the age of 60 years

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w.e.f. 31st March, 2013 in other words he is having less than three years to superannuate from Government service. He has two daughters, one is continuing her engineering in TRIDENT Academy of Technology Bhubaneswar and the other one is prosecuting her BBA in Ravenshaw College, Cuttack. Besides the above, the old ailing mother of aged about 89 years is under treatment at Cuttack. In the circumstances he is not able to shift his family from Cuttack. In case he is out of the family on transfer, there is none to take care of the interest of his family. The Government of India, Ministry of Information and Broadcasting, New Delhi issued a set of guidelines evolving principles of transfer of the employees continuing under the Respondents from one station to other in Annexure-A/5. In clause (xvi) of the said policy of transfer it is provided that 'six months before expiry of the normal tenure of posting at a station an employee may indicate his choice of minimum of three different stations where he would like to be preferably posted and such option may be taken into consideration before his next posting is decided and in clause (xxi) it has been provided that 'Members of staff who are within three years of reaching the age of superannuation, will, if posted at there home town, not be shifted there from, if it becomes necessary to post them elsewhere, offers will be made to shift them to or near their home towns to the extent possible. In paragraph 2 it has been provided that transfer policy, as enunciated above, should be implemented, as objectively as possible. If any exception is required to be made, it should be got approved at the highest level in the Directorate. But in violation of the aforesaid policy of transfer and even before completion of his tenure at his present place, while keeping employees in their present place of posting even long after their continuance in one place, vide order No. ER-1(2/OS)/2009-S dated 22nd May, 2009, Respondents transferred and posted him to AIR, Bhawanipatna. He challenged the said

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order before this Tribunal in OA No. 208 of 2009 and pursuant to the order of this Tribunal 07.08.2009 his order of transfer was cancelled by the Respondent No.1 vide order under Annexure-A/2 dated 30.11.2009. Therefore, the present order of transfer passed by Respondent No.2 is without competence and jurisdiction. Further stand of the Applicant is that one Shri P.C.Panda who is/was having less than three years of service was transferred from AIR, Cuttack. He challenged the said order of transfer before this Tribunal in OA No. 301 of 2010 on the ground that his transfer violates the provision made in clause xxi of the transfer policy and as such, the same is liable to be set aside. This Tribunal quashed the said order of transfer specifically on the ground that same was in violation of the provision of para xxi of the transfer policy. As the present order has been made in contravention of the provision made under the same para xxi of the transfer policy, by applying the decision taken in the case of Mr.P.C.Panda, the orders under Annexure-A/3 and A/4 are not sustainable in the eyes of law. It has been contended that when Shri G.B.Mohaptra, PEX, AIR has specifically requested in his representation to consider his transfer and posting at AIR Puri and the said representation was duly forwarded by the Station Director, AIR, Cuttack without considering his case transferring the applicant shows the vindictiveness and ulterior motive of the Respondents and, as such, his order of transfer is liable to be set aside.

3. Respondents begin their stand in the counter filed in this case that as per the decisions of 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 except the transfer

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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. The Applicant has suppressed and twisted facts and has made unwarranted reference to the extraneous representation of one Shri G.B. Mohapatra in order to create confusion in the matter. Applicant out of his entire service of 33 years has been allowed to continue for nearly 29 years at Cuttack. This itself shows the graceful and sympathetic approach of the official respondents in the matter of his transfer. The first transfer of the applicant in the year 1994 to AIR, Jeypore became necessary on account of his promotion to the next higher grade of PEX and acceptance of the promotion by him. The consequential advantage of working at AIR, Jeypore had been fully granted to the applicant by transferring and reposting him at AIR, Cuttack. The benefit of accepting the entitlement of giving a place of choice after working in a hard tenure station having been fully granted to the applicant it is not wise on his part to re-agitate the same hard tenure for claiming the similar benefit again. The hard station posting of the applicant was on promotion and another hard station posting was at his own request. During his entire service period spanning 33 years he has served away of his home town only for four years. His transfer to AIR, Bhawanipatna was ordered by the competent authority as an incidence of service taking into account the depleted staff strength of a 200 KW station situated in the hinter land of Orissa dominated by tribal culture. It has been admitted by the Respondents in their counter that this Tribunal directed stay of the applicant upto 22.6.2009 but subsequently it was cancelled by the order dated 30.11.2009. In so far as violation of the provision made in clause xxi of the transfer policy it has been contended by the Respondents that there has been no clear cut embargo not to transfer an employee having three years to retire.

It merely provides that if it becomes necessary to post an employee elsewhere offers will be made to shift to or near his/her home town to the extent possible. As Respondent No. ⁴ is having less than one year to retire he has been brought to Cuttack and in turn the applicant has been posted to the place of Respondent No. ⁴. On the above reasons, the Respondents have prayed for dismissal of this OA.

4. No counter has been filed by Respondent No. ⁴ despite notice being served on him from this Tribunal.

5. Mr. Ojha, 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/5 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 without obtaining the approval of the Respondent No. 1 as provided in paragraph 2 of the said order of transfer; especially when the earlier order of transfer was cancelled by Respondent No. 1 pursuant to the direction of this Tribunal in OA No. 208 of 2009 dated 7.8.2009 filed by the present Applicant. 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 of the principle having 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 and as such by applying the said order of this Tribunal in view of the law laid down by Their Lordships of the Hon'ble Apex Court, the Tribunal should follow the precedent, the present order of transfer is liable to be set aside. Besides the above, it was contended by him that as the Respondent No. 4 is having less than one year he was brought to Cuttack and, on the same analogy as the applicant is having less than three years of service he should not have been transferred to Puri without considering the representation submitted by Mr. Mohapatra, PEX continuing at AIR, Cuttack to go to AIR Puri. On the other hand Mr. Mohapatra, Learned Senior Standing Counsel appearing for the Respondents vehemently contended 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.

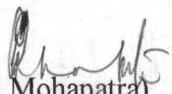
6. I have considered the rival submissions of the parties and perused the materials placed on record. Fact remains that the applicant has to his credit less than three years to superannuate from service. Also it is a fact that the present order of transfer issued by the Respondent No. 2 in contravention of the provision made in clause xxi of the policy under Annexure-A/5 is without obtaining the approval of the Respondent No. 1 as provided in paragraph 2 of the said policy of transfer under Annexure-A/5. 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 under Annexure-A/5. Since present transfer is in contravention of the provisions of clause xxi it can safely be held that the order is without authority and hence a nullity. This is because the transfer policy framed by the Government 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 required to be obtained prior to the order of transfer. The Respondents have rightly pointed out that as per the decisions of 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 Hon'ble Apex Court, referred to above, enabling this Tribunal to interfere in the present order of transfer. This apart, it is the positive case of the Respondents that Respondent No.1 was brought to AIR, Cuttack for the reason of his having less than one year of service. But on the same logic the Respondent No.2 while ordering transfer of the applicant should have taken into consideration the application of Shri G.B.Mohapatra, PEX seeking his transfer and posting to AIR, Puri instead of the Applicant which would have saved the exchequer of bearing the extra financial burden by payment of TA/DA to the Applicant and Respondent No.1 but also saved the involved protracted litigation. 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 order of 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.]. As such, I have no hesitation to quash the present order of transfer by following the decision in the case of P.C.Panda (supra) in so far as the applicant is concerned. **Ordered**

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accordingly. But keeping in mind that the Respondent No.4 has only less than ten months to retire, the Respondent No.2 is hereby directed to allow the Respondent No.4 to continue at AIR Cuttack by transferring Shri G.B. Mohapatra, PEX to Puri or by making any other suitable arrangement.

7. With the aforesaid observation and direction this OA stands disposed of. No costs.


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