

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

O.A.No. 537/2010

Suresh Kumar Routray

....Applicant

Versus

Union of India & Others

.... Respondents

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1. Order dated: 08.10.2010.

CORAM:

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

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Applicant, at present working as Hindi Typist in the Office of the Regional Director, ESI Corporation situated at Plot No.HIG-3, Gangadhara Mehere Nagar, Jayadev Bihar, Bhubaneswar/Orissa, has sought in this Original Application filed under section 19 of the Administrative Tribunals Act, 1985 to quash the order under Annexure-A/6 dated 15-09-2010 whereunder he was diverted to 103-A Branch functioning in EDP/IT Cell with immediate effect to attend the work of the Branch. The grounds of challenge are that earlier he has approached this Tribunal in OA No. 445 of 1998 seeking direction for equation of the post of Hindi Typist with LDC but he has lost the matter. The Respondents being biased/vindictive shifted him from his place though there is only one sanctioned post of Hindi Typist in the office of Respondent No.3 in which post he has been working and that there is no work in the Branch of IT cell for the Hindi Typist to attend.

2. Respondents' contention in their counter is that with the availability of computers equipped with the facility to work in Hindi language using Devanagari script along with Roman alphabets in various Branches of the office of Respondent No.3 and taking into account the fact that the applicant has the skill of Hindi typing only on normal typewriters. Hindi Typist had virtually no

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work to attend to in the Rajbhasa Sakha, the applicant was diverted to 103-A/EDP/IT Branch which is a part of the office of Respondent No.3 in the same building (3<sup>rd</sup> floor, to attend to the work of typing in Hindi on administrative exigencies. It is further stated that the diversion was made only on temporary basis to prepare the live list of Insured Persons and other allied work in Hindi, Respondent No.3 being the competent authority to engage the staff members posted under his control to attend to any work other than their own assignment had ordered the diversion of the applicant only with the aim of diarizing the return of contributions submitted by the employers in Hindi and to prepare the live list of Insured persons in Hindi in the best interest of the Official Language Policy and not to do the work other than Hindi in that Branch as apprehended by the Applicant. Accordingly Respondents have prayed for dismissal of this OA.

3. Applicant filed rejoinder to the counter filed by the Respondents trying to justify his shifting from one floor to other in the same office building as illegal.

4. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings. After giving due consideration to the rival submissions of the parties, perused the materials placed on record including decisions rendered by the Hon'ble Apex Court in the matter of interference in the order of transfer of an employee made in public interest. It is worth-mentioning that the Applicant is holding a transferable post is not in dispute. Also it is not in dispute that transfer is an incident of service and the authorities concerned are the best judge to decide who should be transferred where and at what point of time for the smooth running of the wheels of the administration and judicial interference in the matter of transfer of an employee is only in the event it is

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proved that exercise of power in transferring an employee is by way of mala fide or infraction of any of the statutory and mandatory Rules governing the transfer of such employee and in all other transfers judicial interference and intervention is strictly prohibited. It has been held by the Hon'ble Apex Court in the case of **Silpi Bose v State of Bihar** (reported in AIR 1991 SC 532) that 'where a competent authority issued an order transferring an employee with a view to accommodate another employee, then also the said transfer order cannot be interfered with by the Court'; in the case of **Union of India v S.L.Abbas** (reported in AIR 1993 SC 2444) that 'who should be transferred where' is a matter for the appropriate authority to decide; in the case of **Union of India v H.K.Kirtania** (reported in 1989 (3) SCC 445) and **Gujarat Electricity Board v Atmaram Sungomall Pashani** (reported in AIR 1989 SC 1443) that transfer of an officer holding a transferable post cannot be objected to and that the Authority is the best judge to decide to distribute and utilize the services of an employee; in the case of **State of Orissa v Kishore Chandra Samal** (reported in 1992 (2) SCALE 251) that where transfer is within the cadre with the identical responsibility, no objection can be raised against the transfer order; in the case of **State of Madhya Pradesh v S.S.Kourav** (reported in AIR 1995 SC 1056) that Courts and Tribunals, not being the Appellate Authority to decide on transfer of the officers (made on administrative grounds); it should allow the wheels of the administration to run smoothly and that Courts/Tribunals are not to interfere in working of the administration and in the of **Union of India v N.P.Thomas** (reported in AIR 1993 SC 1605) that if the transfer is not in violation of any statutory rule there should not be any vested right available to an employee to continue in his original post. Further in the case of **S.C.Saxena v UOI and**

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**Others-2006 (6) SCC 583**) it was held by the Hon'ble Apex Court that on transfer, **one should report first at new station and, thereafter only he/she can raise his grievance**, if any. It is not the case of the applicant that the shifting of the applicant from once place/seat to another was in violation or infraction of any Rules. On examination of the case of the Applicant vis-à-vis the aforesaid decisions of the Hon'ble Apex Court I find no justifiable reason to interfere in the order of transfer because none of the arguments advanced by Learned Counsel for the Applicant has any legs to stand; firstly because it is seen that the allegation of *mala fide* urged by the applicant as one of the grounds in support of his prayer to quash the order of transfer is not based on any concrete material and is based on conjecture and surmises. In this connection it is noted that people are prone to making the allegation of *mala fide*/usually raised by an interested party (as in the instant case). Therefore, in very many cases, the Hon'ble Apex Court cautioned that the Courts/Tribunal should not draw any conclusion unless such allegations are substantiated beyond reasonable doubt. As stated above, since the allegation of *mala fide* exercise of power made by the applicant is based on conjecture and surmises the same is not sustainable. The shift of the applicant was in public interest for a temporary period. In a number of cases it has been held by different Courts that public interest is the paramount consideration than personal interest.

5. In the above premises, viewed the matter from any angle, I find no merit in this OA which is accordingly dismissed by leaving the parties to bear their own costs.

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