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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A. No. 04 of 2011

Abani Kanta KarApplicant

Vs

UOI & Ors. Respondents

1. Order dated: 6th July, 2011.


C O R A M

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

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The order under Annexure-A/3 dated 18th November, 2010 is sought to be quashed by the Applicant in this Original Application filed under section 19 of the A.T. Act, 1985 with further prayer to direct the Respondent Nos. 1 to 3 to allow him to continue in his present place of posting till his retirement/31-05-2012. It was contended by the Learned Counsel for the Applicant that as the present order of transfer of the Applicant is in violation of the norms and guidelines dealing with the transfer and posting of the employees of the concerned Department, transferring the applicant to Kolkata when he has to retire on reaching the age of superannuation of 60 years on 31-05-2012 is not sustainable in the eyes of law.

2. According to the Applicant, clause 8 (c) of the operative transfer guidelines in Annexure- dated 16th June, 2009 clearly provides that transfer of Gr.B & C employees of the concerned department can only be made on the recommendation



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of the Committee formed under the Chairmanship of Addl. S.G. (HR). Further clause 9 of the said guidelines provides that employees having two years retirement have the opportunity to seek for posting at his choice station. Despite this provision, the applicant who is having only 10(ten) months service more to retire on reaching the age of superannuation has been disturbed which is not sustainable in the eyes of law. That the transfer is in the public interest as canvassed by the Respondents is not true as public interest is not the subjective satisfaction of the competent authority who passes the order. Such an order must be in public interest and capable of being tested objectively. Further stand of the Applicant's counsel is that the transfer to such far away place will have adverse effect on his post retirement settlement. He, has therefore, reiterated his prayer made in this OA.

3. Despite due notice, Respondent No.4 has neither appeared nor filed any counter.

4. Relying on the averments made in the counter, it was contended by Mr. U.B.Mohapatra, Learned Senior Standing Counsel for the Respondents that the home town of the Applicant and Respondent No.4 is at Bhubaneswar. Both of them were promoted to the post of Establishment and Accounts Officer vide letter dated 23.5.2006. On their promotion, while the Applicant

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was posted at Bhubaneswar, Respondent No.4 was given posting at Kolkata. She represented for her posting at Bhubaneswar. With the recommendation of the Controlling Officer and Staff Association her request for transfer to Bhubaneswar was sent to Surveyor General. However, her requests could not be accepted due to non-availability of vacancy at Bhubaneswar. But at a later stage her request was reconsidered and she was posted in place of the Applicant on extreme compassionate ground and the Applicant was transferred to Kolkata vide order dated 18.11.2010. In the above back ground, Mr. Mohapatra's contention is that as the applicant is holding a post having All India Transfer Liability and has remained at Bhubaneswar for a long time, he should not have objected to such transfer. It has further been contended that exercise of the power by the Respondent No.2 in posting Respondent No.4 in place of the applicant without the recommendation of the Committee was in accordance with the guidelines in Annexure 14. Therefore, no interference is warranted in the present case.

5. After considering the rival submissions of the parties, perused the materials placed on record including the operative guidelines dealing with the transfer and posting of the concerned employees working under the Respondents.



6. It is not in dispute that the date of birth of the Applicant being '30-05-1952' he is short of only 11 (eleven) months to reach the 60 (31-05-2012) years which is the date of retirement of an employee of the Government of India.

7. Now it is clear from the pleadings and submissions made by Learned SSC for the Respondents that the SGO, New Delhi transferred the Applicant to Kolkata to accommodate the Respondent No.4 in his place on compassionate ground. Nothing is forthcoming that this has been done on the recommendation of the Committee constituted for considering the transfer and posting of employees concerned. It is the contention of the Respondents that the SGO, New Delhi exercised such power of transfer in isolation in terms of the guidelines at Annexure~~R~~14. But on perusal of the guidelines at Annexure~~R~~14, I find such a provision is lacking- rather the guidelines at Annexure-14 supports the stand of the Applicant that the transfer should only be on the recommendation of the Committee which has not been done in the present case. In the counter it has been stated by the Respondents that the posting of the Respondent No.4 in place of the applicant was done by the SGO, New Delhi on the recommendation of the Staff Association and the Supervising authority of Respondent No.4. In view of the above that the



transfer of the applicant was in public interest is completely a myth.

8. The contention of the applicant that while he was continuing at Bhubaneswar, Respondent No.4 was allowed to resume her duty at Bhubaneswar on 24.11.2010, he proceeded on leave w.e.f. 29.11.2010 and both of them were allowed to draw their salary at Bhubaneswar for the months of November and December, 2010 have not been rebutted by the Respondents either in their counter or in course of hearing. Hence it is presumed to be correct.

9. Numerous decisions of Hon'ble Apex Court, High Courts and various Benches of the Tribunal rendered over a span of nearly more than one decade have laid down and reiterated the principles in the matter of transfer the Tribunal lacks jurisdiction to interfere with the exception that exercise of judicial review on the transfer is possible where the transfer is actuated with *mala fide* or in violation of the operative guidelines, statutory and mandatory rules.

10. The peculiarity of this case is the applicant has been transferred at a time when he has only eleven months to retire and to accommodate the Respondent No.4 which is other than public interest. This transfer has been made without the recommendation



of the Committee as required under the operative guidelines. It appears that the SGO, New Delhi while ordering the posting of the Applicant might have lost sight that the applicant has only eleven months to superannuate and I am sure had it been brought to the notice of the SGO, New Delhi he would not have hesitated to defer the posting of the Respondent No.4 at least till the retirement of the Applicant instead of hurriedly issuing the transfer order without the recommendation of the Committee. In the present situation and circumstances the decision of the Hon'ble Apex Court in the case of **Kendriya Vidyalaya Sangathan v Damodar Prasad Pandey and others**, (2007) 2 SCC (L&S) 596 has some bearing to the grievance of the Applicant. Relevant portion of the decision reads as under:

"4. Transfer which is in incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide **or infraction of any prescribed norms and principles** governing the transfer (see Abani Kanta Ray v State of Orissa). Unless the order of transfer is visited by mala fide or **is made in violation of operative guidelines**, the court cannot interfere with it (see Union of India v S.L.Abas). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or **is made in violation of any operative guidelines** or rules the courts should not ordinarily interfere with it." (emphasis supplied)




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11. Fact remains that there is no statutory rule governing the transfer and posting of the employees working under the Respondents and, as such the transfer and posting of the employees are governed by the operative guidelines which are proved to be violated in this case.

12. Despite the above, this being a matter of transfer, I do not like to interfere in the administration of the SGO, New Delhi by quashing the transfer of the applicant and posting of Respondent No.4 in his place. At the same time, I am hopeful that the Respondent No.2 shall do well/needful to defer the transfer of the Applicant from Bhubaneswar till 31-05-2012 and pass appropriate order in this connection within a period of 30 (thirty) days from the date of receipt of copy of this order.

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


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