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O.A. No. 173 of 2009

Order dated: 09.10.2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member(J)
Hon'ble Mr. C.R.Mohapatra, Member (A)

The applicant has approached this Tribunal challenging the transfer order dated 1.5.2009, which was communicated to him on 4.5.2009.

2. Once we had heard the case of the applicant and passed an interim order on 11.05.2009 staying the transfer order. However, subsequently a statement had been filed for and on behalf of the Respondents taking the stand that the transfer of the applicant was necessary because of his misdeeds thereby creating problems to the neighbours as well as the occupants of Govt. quarters. On that statement we had vacated the interim stay order. However, this order vacating the interim order was taken before the Hon'ble High Court of Orissa in Writ Petition (C) No. 8220/09. The Hon'ble High Court by an order dated 04.08.2009 directed this Tribunal to consider the O.A. on merit. Hence, this O.A. is considered today.

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3. We heard Shri B.S.Tripathy, Ld. Counsel for the applicant and Mr. S.Mishra, Ld. A.S.C. representing Mr. U.B.Mohapatra, Ld. Sr. Standing Counsel and also perused the documents produced before this Tribunal by either side.

4. The case of the applicant before this Tribunal is that the present transfer order is unjustifiable and without any reason. It is not on any administrative reason. It is also not discernible from the impugned order as to what is the reason behind the present transfer. However, the Ld. Counsel submits that even accepting the statement filed on behalf of the Respondents and Annexures-R/1 and R/2 it would show that some misdeed was there on the part of the applicant during 2006, but the same appears to be not enough to transfer the applicant as per Annexure-A/3, transfer order. Hence this Tribunal may set aside the transfer order forthwith.

5. We heard Ld. Counsel for the Respondents also on this aspect. Reiterating the stand taken in the reply statement and relying on Annexures-R/1 and R/2, the Ld. Counsel submits that the applicant created problems in the Govt. quarters, which necessitated the transfer of the applicant.

6. We have considered the matter on merit. Admittedly, the applicant is working as Sweeper, a class-IV employee, who has been now transferred to Rourkela, about 500 Kms away from the present station. It is also to be noted that as per Annexures-R/1 and R/2 some misdeeds on the part of the applicant had been committed during 2006 based on which some resolution has been passed by the Residents' Association signed by one Mr. J.B.Sahoo, Secretary of the Unit of Welfare Body of Central Excise & Income Tax Residents. Even going through that resolution, we find that it has no adverse effect, which will militate against the applicant for resorting to transfer. That apart, we have seen that even on the basis of the resolution or complaint received from outside, the Department has not taken any disciplinary action against the applicant or given any notice to the applicant to answer the complaint. If so, the present order of transfer is not justifiable.

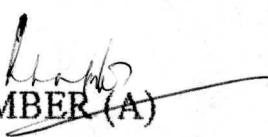
7. The order passed on the representation filed by the applicant, as directed by this Tribunal in O.A.No. 299/08, is also considered by this Tribunal on merit.

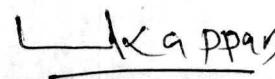
8. It has also been argued before this Tribunal by the Ld. Counsel for the applicant that the applicant's

children are studying in the nearby school of present station, in Oriya Medium and the applicant is living on his small income.

9. Having regard to the facts and circumstances of the case, we are of the view that the present transfer is not justifiable. If so, the order of transfer has to be quashed. We, therefore, allow the O.A. by quashing Annexure-A/3. It is also made clear that this order will be in force even if the applicant is relieved by this date and he shall be permitted to rejoin his post at the present station. Ordered accordingly.

10. The O.A. is accordingly disposed. No costs.


MEMBER (A)


MEMBER (J)

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