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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION NO.422 OF 2011

Cuttack this the 02nd day of October, 2011
November,

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

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Sri Premananda Samal, aged about 57 years, Son of Sri Pranakrushna Samal, at present working as Senior Divisional Accounts Officer, Cuttack (R&B) Division, Office of the Executive Engineer, Cantonment Road, Cuttack, At/PO/Dist-Cuttack

...Applicant

By the Advocates: M/s.S.K.Das
S.K.Mishra
P.K.Padhi

-VERSUS-

1. Union of India represented through the Comptroller and Auditor General of India, 9, DDU MARG, New Delhi-110124
2. Principal Accountant General (Accounts and Entitlement), Orissa, Bhubaneswar, Dist-Khurda
3. Deputy Accountant General (Works Accounts), Orissa, Puri-752 002
4. Executive Engineer (R&B) Division, Cantonment Road, Cuttack-753001
5. Executive Engineer, National High Way Division, Nayapalli, Bhubaneswar
6. Sri Nimaik Charan Khandual, Senior Divisional Accounts Officer, National High Way Division, Nayapali, Bhubanesswar
7. Sri Kamalakanta Nayak, Senior Divisional Accounts Officer, Public Health Division No.1, Chhatrabazar, Canal Road, Cuttack, At/PO/Dist-Cuttack

...Respondents

By the Advocates: Mr.B.K.Mohapatra (Res. 1 to 3)
Mr.G.C.Nayak (Res.No.4)
Mr.K.C.Kanungo &
Mr.H.V.B.R.K.Dora(Res.No.6)

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ORDER

A.K.PATNAIK, JUDICIAL MEMBER: Applicant, at present working as Senior Divisional Accounts Officer, Cuttack (R&B) Division, Office of the Executive Engineer, Cantonment Road, Cuttack, At/PO/Dist-Cuttack has moved this Tribunal in the present Original Application assailing the impugned order dated 26.4.2011(Annexure-A/3) wherein and whereunder he has been transferred and posted to the office of the Chief Engineer (R.W), Bhubaneswar, order dated 1.7.2011

[Signature]

(Annexure-A/5) rejecting his representation and office order dated 1.7.2011 (Annexure-A/7) relieving the applicant from the present place of posting to join transferred place. In the circumstances, the applicant has sought for the following relief.

“...to quash the order of transfer dated 26.4.2011 and consequential orders dated 1.7.2011 under Annexure-A/3, A/5 and A/7 respectively and direct the respondents to allow the applicant to continue in the office of the Executive Engineer Cuttack (R&B) Division, Cuttack”.

2. The brief history of this matter is that earlier the applicant had moved this Tribunal in O.A.No.344 of 2011 questioning the legality and validity of the order of transfer dated 26.4.2011, which is impugned herein. This Tribunal, vide order dated 24.5.2011 disposed of the said O.A., the relevant portion of which runs thus:

“I have given my thoughtful consideration to various points raised by the parties with reference to the record. At the out set it is observed that in a catena of decisions, the Hon’ble Apex Court have held that transfer of Civilian Employees is within the domain of the Authorities concerned and unless the same is actuated with mala fide or infraction of statutory and mandatory rules, the Courts/Tribunal should not interfere with such matters. Recently the Hon’ble High Court of Orissa in order dated 05.01.2011 in WP© No.17767 of 2010 (Union of India and others v. Prakash Chandra Ray and others) quashed the order of this Tribunal dated 05.09.2010 in O.A.No.416 of 2010 holding that guidelines do not have statutory force of law and hence infraction of the guidelines shall not confer jurisdiction on the Court to interfere with an order of transfer and the Tribunal should not interfere in the order of transfer unless it is in violation of statutory provisions or on ground of mala fide. In view of the above, I do not find any ground to entertain this O.A.

However, since the applicant has made representation dated 29.4.2011 and 16.5.2011 citing his difficulties to the concerned authority and learned counsel for the applicant submits that the applicant has still not been relieved, Respondent No.2 with whom the said representation is stated to be pending is hereby directed to take a decision on the pending representation of the applicant within a period of 15(fifteen) days of receipt of copy of this order and till such time, if the applicant has not been relieved, he shall not be relieved from his place of posting

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With the aforesaid observation this O.A. stands disposed of'.

3. In the above backdrop, the Respondent No.2 disposed of the representation vide Annexure-A/5 dated 1.7.2011, the relevant portion of which reads as under:

"Pursuant to orders dated 24.05.2011 passed by Hon'ble C.A.T. in O.A.NO.344/2011, the aforementioned representations of Sri Samal were duly considered by the Pr.Accountant General and he did not find any merit and/or convincing reasons to modify the order of transfer dated 26.04.2011. Hence, the request of Sri Samal could not be acceded to by the Pr.Accountant General".

4. It is the case of the applicant that Annexure-A/5 disposing of his representation is a bald and sketchy order and suffers total non application of mind as no cogent reason has been assigned by Respondent No.2. According to him, in the absence of any reason in any manner whatsoever, Annexure-A/5 shows mala fide and highhandedness of the authority concerned. It has been submitted that while the applicant was on leave from 29.6.2011 to 5.7.2011, duly sanctioned, the order relieving him of his duties smacks mala fide. Further, it has been submitted that right accrues on the applicant based on Annexure-A/2 dated 23.8.2010 dealing with **Transfers and Posting of Divisional Accountants Officers/Divisional Accountants – instructions regarding.** Since Paragraph-4 of the said instructions - **Tenure of Postings** envisages "the tenure of posting shall normally be three years in a particular Division and six years at a particular District, transfer of the applicant from Cuttack to Bhubaneswar within a span of about one year infringes the very basic objective of tenure of postings (Annexure-A/2) and as such, the impugned order of Transfer at Annexure-A/5 is liable to be quashed.

5. Respondent Nos. 1 to 3, 4 and 6 have filed counters separately opposing the prayer of the applicant. In the counter filed by Respondent No.1 to 3, it has been submitted that the earlier O.A. No.344/11 filed by the applicant having been

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disposed of on the self same subject/grounds, the present O.A. as led is not maintainable. According to Respondents, since the direction of this Tribunal in O.A.No.344/11 have already been complied with in letter and spirit, there is no justified reason to agitate the same thing again for further adjudication by this Tribunal. They have submitted that the guidelines governing the field of transfer of DAs/DAOs/Sr.DAOs are in the nature of executive instructions and those do not have any statutory force. According to Respondents, since the executive instructions are not mandatory in nature but discretionary, relying upon which transfer and posting at a particular place and/or retention at a particular place for the minimum period as prescribed therein cannot be claimed as a matter of right. By citing decision of the Hon'ble Supreme Court in Mrs.Shilpi Bose and Ors. v. State of Bihar & Ors. (AIR 1991 532), it has been submitted by the Respondents that even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order. Finally, it has been submitted that the order of transfer having been issued in public interest and in exigencies of service, the Tribunal should not interfere, particularly when there is no mala fide intention or malice involved in such transfer.

6. The stand points taken by the other respondents being more or less the same, it is not worth mentioning.

7. This matter came up for admission on 4.7.2011, when this Tribunal directed notice to the Respondents. On the question of interim relief, the Tribunal directed status quo as on the date of the Application till 11.07.2011 – to which the matter is posted awaiting the instruction/reply on the prayer for interim order to be maintained and this status quo order is in force as of date.

8. We have heard learned counsel for the respective parties and perused the materials on record.

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The short point to be decided in this O.A. is whether the Respondent-Department have disposed of the representation in letter and spirit. In other words, whether Annexure-A/5 is a reasoned order.

10. In order to decide the above point, it is prudent to catch a glance the representations which were considered and disposed of by Respondent No.2. On a reference being made to Annexure-A/5, it reveals that representations dated 29.4.2011, 12.5.2011 and 16.5.2011 were the magnitude of consideration. It is to be noted that applicant has not annexed to the O.A. copies of the representations dated 29.4.2011 and 12.5.2011 and what the representation is available is dated 16.5.2011 at Annexure-A/4. The main thrust of the representation as at Annexure-A/4 was that his transfer to Bhubaneswar was before completion of three years tenure and as such the transfer order is violative of guidelines set out in this regard vide Annexure-A/2. Besides, the applicant had agitated his grievance that in the event of his transfer to Bhubaneswar treatment of his old and ailing parents would be at stake.

11. We have considered the submissions made by the learned counsel for the parties and given our anxious thoughts to the arguments advanced at the Bar. It is to be noted that this Tribunal, while disposing of O.A.No.344/11 in order dated 26.4.2011 (supra) categorically reduced it to writing that **that guidelines do not have statutory force of law and hence infraction of the guidelines shall not confer jurisdiction on the Court to interfere with an order of transfer and the Tribunal should not interfere in the order of transfer unless it is in violation of statutory provisions or on ground of mala fide.** The whole structure upon which the present O.A. rests upon having already been taken note of and decided in O.A.No.344/11 as above, Respondent No.2 ~~had~~ hardly left with any scope as he was estopped to consider the same point after the opinion expressed by the Tribunal. In the circumstances, it cannot be said that Annexure-A/5 is not a cogent order.

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12. In so far as treatment of the parents of the applicant is concerned, it is a matter which ought to have been considered by the Respondent-Department by appealing to the conscience, as they are the best judge in the matter. But, the Court/Tribunal cannot take cognizance of this matter which is extrajudicial. In the counter the Respondent-Department have replied that transfer of the applicant from Cuttack to Bhubaneswar would in no way affect the treatment of his parents and the applicant could take so much care as he has been taking even after his transfer to Bhubaneswar.

13. In the factual matrix of the matter, we are not inclined to interfere with the order of transfer and accordingly, we hold that the O.A. being devoid of merit is liable to be dismissed. Ordered accordingly.


(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K.PATNAIK)
JUDICIAL MEMBER

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