

Order dated: 07.08.2009

CORAM:

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

Aggrieved by the transfer order dated 22.05.2009, the applicant filed this O.A. praying that the transfer order, to the extent applicable to the applicant, may be interfered with and such other orders may be passed.

2. When the O.A. came up for admission, this Tribunal, after hearing the Ld. Counsel appearing for the applicant and also Ld. Counsel appearing for the official Respondents on notice, passed an interim order on 25.05.2009 directing the applicant to file a representation and also directing the Respondents to keep the transfer order in abeyance till the disposal of the representation.

3. When the notice has been received by the Respondents including private Respondent No.4, respective reply statements have been filed.

4. On receipt of the counters filed on behalf of the Respondents, a rejoinder has also been filed by the applicant

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contending that the stand taken in the counters is not correct.

5. We have heard Mr. G.Rath, Ld. Counsel for the applicant, Mr. A. K. Mishra, Ld. Counsel for the private Respondent and Mr. S.Bark, Ld. Counsel appearing for the official Respondents in detail.

6. It is also to be mentioned here that during the pendency of this O.A. we had directed the applicant to file an affidavit showing the vacancy position and also with regard to the officials of the same rank who were holding the post at the Cuttack Station and to find out whether any officer is there still in service in the office without having any posting at any hard station. On the basis of that, an affidavit has been filed showing that there are 10 officers having the same rank with details regarding posting in difficult station also.

7. Today, we heard the case in detail and the main case put forward by the Ld. Counsel for the applicant is that the applicant has already served at a hard station for two times and as per the guidelines issued by the Department for transfer and posting, an employee who was posted to 'C' station at least one time during his service cannot be posted to such a station for second time if there are candidates in

the same grade who are to be posted to such station. The further case of the applicant is that he has not completed the tenure period of transfer.

8. On the above two points, we have considered the case of the applicant at length.

9. At the same time Mr. A.K.Mishra, Ld. Counsel appearing for the 4th Respondent, has contended that the 4th Respondent is also coming from a hard station and he should also be accommodated as per same guidelines issued by the Department and, if so, the interim order should not be allowed to continue and any interference in the transfer order will affect him also.

10. In the above background, we have already considered the position of the officials with regard to their standing and posting in hard station who are now holding the post at Cuttack Station. Ld. Counsel appearing for the Government has also brought to our notice that there are 11 officers at Cuttack Station out of whom two are not posted to any difficult station. But at the same time, we have noted that all other officials have either been posted once, twice or thrice to the difficult Stations. If so, this is the common question coming regarding the posting or transfer of officials

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from the hard station as per the guidelines framed by the Department. It is a principle that if hard stations are there and employees are posted there with a tenure period they should be given a chance for coming back to normal station within a limited period. At the same time, as we have seen that if there are officials already having service within the station and those who want to come back to such A or B station, the Department has to accommodate him and repost any of the official to the hard station once again without considering the clause contained in the guidelines. In that circumstance, it is only possible to have some difficulty caused for any official who is being posted or reposted to hard station. In this view, we have to see whether this Tribunal can interfere in the matter or not. This is a question to be considered by the administration and that is not left out to be looked after by us. However, the question now agitated before us is that there are officials who are not posted to hard stations. To this question, Ld. Counsel for the official Respondents has stated that only two ladies are left without having any posting to difficult station. At the same time, we have got information from the Ld. Counsel for the 4th Respondent as well as the Ld. Counsel for the Official

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Respondents that there is one officer called Abhaya Kumar Das, who is now already posted to Joranda and that post now appears to be vacant. If so, the question to be answered is whether the applicant could be accommodated in that post or transferring any other official who has got less hard station service to accommodate the applicant in the present station. But this is a question to be considered by the authorities and in this context, we are also informed by the Ld. Counsel for the applicant that the Department itself by an order dated 27.07.2009 given an extension of time till 1.09.2009 to give effect to the transfer of the applicant. If so, within that time or even within one month more from that date the Department has to consider whether the applicant can be accommodated either in the place of Mr. Abhay Kumar Das, or if possible, to transfer any person who has got lesser hard station service who is now holding the post except that of 4th Respondent because the 4th Respondent is coming from a hard station who has got a privilege as per the present guidelines. Any how, final decision in this matter shall be taken by the Department within 45 days from today. Till a final decision is taken in the matter, the order of transfer of the applicant shall be kept in abeyance. However,



this position shall not be considered as a disturbance to the 4th Respondent to be accommodated in the present transferred place namely, at Cuttack. However, this order also will not affect the transfer of the 4th Respondent.

11. With the above observation and direction, the O.A. is disposed of. No costs.

Debark
MEMBER (A)

14 Apr 97
MEMBER (J)

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