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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No. 765 of 2011

Cuttack, this the 30th January, 2011/2012

CORAM

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

.....

1. Sri Krushna Chandra Purty, aged about 50 years, S/o.Late Kedar Purty;
2. Sri Rama Chandra Rout, aged about 49 years, S/o.Late Keshab Charan Rout;
3. Sri P.Padmanav, aged about 44 years, S/o.Late P.Basudev Rao;
4. Sri Banshidhar Sahu, aged about 50 years, S/o.Late Chandramani Sahu;
5. Sri Harekrishna Das, aged about 50 years, S/o.Late Ramakrishna Das;
6. Sri Y.Iswar Rao, aged about 43 years, S/o.Late Y.Appanna;
7. Sri Ananta Kishore Behera, aged about 45 years, S/o.Late Alekha Chandra Behera;
8. Sri Kashinath Beura, aged about 46 years, S/o.Sri Jambeswar Beura;
9. Sri Panchanan Jani, aged about 47 years, S/o.Late Judhisthir Jani.

[All are members of ARC (Ordnance) Service and permanently absorbed in ARC, Charbatia in different units vide order dtd. 07.05.2010 issued by the competent authority].

.....Applicants

By legal practitioner – Mr.S.B.Panda, Counsel

-VERSUS-

1. Union of India, represented by the Director General of Security, Aviation Research Centre, At-Directorate General of Security, Cabinet Secretariat, Government of India, Block-V (East), R.K.Puram, New Delhi.
2. The Special Secretary, ARC, Directorate General of Security, Cabinet Secretariat, Government of India, Block-V (East), R.K.Puram, New Delhi.
3. The Joint Deputy Director (Pers.B), ARC, Directorate General of Security, Cabinet Secretariat, Government of India, Block-V (East), R.K.Puram, New Delhi.
4. Aviation Research Centre (ARC), Government of India, At-Charbatia represented by its Joint Deputy Director (Administration), PS-Choudwar, Dist. Cuttack, Orissa.
5. The Section Officer (E), ARC, Governmtn of India, At-Charbatia, PS-Choudwar, Dist. Cuttack, Orissa.

.....Respondents

By legal practitioner - Mr.S.Barik, ASC

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O R D E R

Per- C.R.MOHAPATRA, MEMBER (ADMN.).

The Applicants who are working at ARC Charbatia have been transferred and posted at different places shown against their names in the order under Annexure-A/7 dated 08-11-2011. Out of FOURTEEN [transferred vide order under Annexure-A/7], NINE of them have approached this Tribunal in the instant OA. Their prayer is to quash the order of transfer under Annexure-A/7 dated 08-11-2011. By way of ad interim order they have sought to stay their transfer pending final decision on this OA.

The matter was listed on 14.11.2011 for considering the question of admission and grant of ad interim order sought by the Applicants in the OA. This Tribunal considered the rival submission of the parties and directed as under;

"4. In so far as merit of the matter is concerned, Mr. Barik, Learned ASC representing for the Respondents seek some time to obtain instruction and file reply both to the merit of the OA so also on the prayer for ad interim order. In the aforesaid ground he strongly objected to the grant of any ad interim order *ex parte*. We also note that the order under Annexure-A/7 is an order wherein 14 persons have been transferred from ARC, Charbatia to different places in public interest within the ARC Organization and it would not be appropriate to admit this OA and grant the

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ad interim order prayed for by the applicants without considering the reply/counter of the other side.

5. In view of the above, issue notice to the Respondents giving them opportunity to file their counter/reply, if any, both to the OA and interim relief prayed for by the Applicants in this OA within a period of four weeks. Put up the matter thereafter for giving further consideration in the matter."

Thereafter, the Applicants approached before the Hon'ble High Court of Orissa in WP (C) No. 30164 of 2011. The Hon'ble High Court of Orissa, vide order dated 22.11.2011, was pleased to pass the following order:

"Heard.

The grievance of the Writ Petitioners is that while issuing notice the Central Administrative Tribunal, Cuttack in OA No. 765/2011 has not protected the petitioners who were under transfer;

In our considered opinion, having not given such protection, the writ application has become infructuous.

Till a show cause is filed by the opposite parties, the petitioners shall not be disturbed from the present place of posting."

As it appears, thereafter Misc. Case No. 18420 of 2011 was filed before the Hon'ble High Court of Orissa seeking modification of the order dated 22.11.2011 passed in WP (C) No.30164 of 2011 and upon hearing the matter, the Hon'ble High Court of Orissa was pleased to dispose of the

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Writ Petition vide order dated 30.11.2011 with the following order/direction:

“This is an application for modification of the order dated 22.11.2011 passed in WP (C) No.30164 of 2011.

While hearing the Misc. Case on consent of learned counsel for the parties, we finally heard the writ petition.

We make it clear that the learned Central Administrative Tribunal shall dispose of OA No. 765 of 2011 within a period of forty five days from the date of communication of this order. Till disposal of OA No.765 of 2011 before the Central Administrative Tribunal, Cuttack Bench, Cuttack the interim order dated 22.11.2011 passed in this Writ Petition by this Court shall remain in force.

The writ petition and the Misc. Case are accordingly disposed of.

Issue urgent certified copy.”

In the above back-ground in deference to the aforesaid orders of the Hon'ble High Court of Orissa this matter was fixed for hearing and final disposal today. By filing MA No. 73 of 2012 Learned Counsel for the Applicants has prayed to take up this OA along with OA No. 27 of 2012 which has been filed being aggrieved by the order of transfer individually. But in view of the specific order of the Hon'ble High Court of Orissa we are not inclined to hear the said OA along with the present OA and the said OA would be decided separately. Hence MA No. 73 of 2012 stands dismissed.



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2. We have heard Mr.Panda, Learned Counsel for the Applicants and Mr. Barik, Learned Additional Standing Counsel appearing for the Respondents on merit of this OA and perused the materials placed on record.

3. The main contentions, in support of the relief claimed in this OA, of the Learned Counsel for the Applicants are that the impugned order of transfer under Annexure-A/7 is not sustainable as the same is unjust, illegal and has been issued in a pick and choose manner, without due application of mind inasmuch as without specifying in which post/capacity they have been transferred. As such it is the contention of the Applicants' Counsel that the order of transfer is the by product of mala fide exercise of power being biased as to why the applicants had earlier challenged their order of transfer before this Hon'ble Tribunal. It has been contended by the Learned Counsel for the Applicants that one can be transferred to a similar/equivalent post and not beyond that whereas in the instant case the transfer of the applicants without any specific post and posting and as such, the order of transfer is not sustainable. Next contention of the Learned Counsel for the Applicants is that ARC (Ordinance) Service was created to took after the CSD which is only available at ARC, Charbatia. As such the Applicants do not

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have any transferable liability nor have the Respondents issued any policy guidelines governing the transfer and posting of the Applicants till date. It has been stated that in the past also none of the members of the Applicants' service have faced any transfer. As such transferring the applicants at this juncture cannot be said to be bona fide exercise of power. Further contention of the Learned Counsel for the Applicants is that since promotion and posting of the applicants is made within the ARC Charbatia, their transfer without finalizing the cadre would seriously affect their promotional avenues and as such the Respondents ought not to have effected the transfer without finalizing their avenues of promotion etc.

Last but not the least it was orally brought to our notice (not in the pleadings) by the Learned Counsel for the Applicants that transfer during current mid academic session though affect the education career of the school/college going children of the applicants, the Respondents issued the order of transfer without taking this aspect into consideration. Accordingly, Learned Counsel for the Applicants vehemently insisted for grant of the relief claimed in this OA.

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4. On the other hand, Mr. Barik, Learned ASC appearing for the Respondents strongly opposed the aforesaid contentions advanced by Learned Counsel for the Applicants. Besides reiterating the points raised in the counter, it was contended by Mr. Barik, Learned ASC appearing for the Respondents that there will be no depletion of the emoluments and status of the applicants by their order of transfer/posting. Their status and the benefits which they are enjoying at present would be well protected. It has been contended by him that the applicants have unnecessarily been apprehending something which is not true. Further it was contended by Learned ASC appearing for the Respondents that such transfer of the Applicants was necessitated due to the fact that all the CSD stores were shifted from ARC Charbatia to SFF Kalsi due to operational/security reasons. It was felt necessary during the cadre review that there was no further requirement of Ordnance Cadre in ARC henceforth. The ARC Ordnance cadre has been abolished and thereby necessitating the transfer of the applicants to different places. Hence Respondents' Counsel has prayed for dismissal of this OA.

5. We have considered the rival submissions of the parties and perused the materials placed on record. It is

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seen that the present transfer of the applicants was due to abolition of the cadre and when the cadre was abolished an employee cannot resist going on transfer on the ground that he/she does not have the transfer liability. However, in the order of appointment of the Applicant No.1 under Annexure-R/1 it was clearly stipulated that the appointment carries with it the liability to serve in any part of India. Be that as it may, that transfer will affect promotional avenue cannot be a ground not to obey the order of transfer especially in view of the abolition of the cadre of the applicants in the ARC Charbatia. As regards the alleged uncertainty due to not assigning any post to the applicants, the same is taken care of by the submission of the learned ASC that there would be no depletion in the status and emoluments which they are holding/receiving at ARC, Charbatia.

6. In so far as the contention of the Applicants' counsel that the transfer would affect the promotional avenues of the applicants is concerned, we may note that the Applicants were appointed by a set of Rules under Annexure-A/1. It has been stated by the Respondents that present 14 applicants will continue till their superannuation and thereafter these posts will cease to exist. Nothing has been produced on record by the Respondents that in view of

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abolition of the cadre, the Rules under Annexure-A/1 governing the service conditions of the applicant have been rescinded/superseded. Therefore, obviously as long as the applicants are in service and the Rules under Annexure-A/1 are in force, the service conditions of the Applicants in so far as promotion etc. will have to be governed by the Rules under Annexure-A/1.

We also do not find any substance on the contention of the applicants' counsel that the order of transfer is the out come of malice in absence of any concrete material in support thereof. Hence we hold that the grounds put forth by the Applicants do not come within the parameter fixed by the Hon'ble Apex Court in various decisions rendered on the subject so as to interfere in the present order of transfer. Accordingly this OA stands dismissed by leaving the parties to bear their own costs.

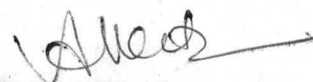
7. But while parting with this case, we wish to observe that the transfer order, if effected during the mid academic session, will have adverse impact on the study of the children. Hence liberty is granted to the Applicants to make individual representations in a weeks' time with material in support of the study of their son/daughter to the concerned authority. We hope and trust, the Respondents


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would consider the same sympathetically and pass appropriate orders within a period of fifteen days from the date of receipt of such representations. Till such time the Applicants shall not be relieved.


(A.K.PATNAIK)
Member(J)


(C.R.MOHAPATRA)
Member (A)

