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O.A.No.264 of 2009

Kumbhakarna Mallilck Applicant
Versus
Union of India & Others Respondents
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Order dated: 23-03-2010

C O R A M

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

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Applicant who is working as Officer Surveyor under the Director, OGDS, Survey of India, RRL, Bhubaneswar, Dist. Khurda, in this Original Application u/s.19 of the A.T. Act, 1985 challenges the order under Annexure-A/2 dated 09.06.2009 and the order under Annexure-A/10 dated 14.10.2009 communicating the order of rejection dated 06/07-10-2009 of the Applicant's representation seeking cancellation of the order of transfer. His main contention in support of the relief sought in this Original Application is that when considering his personal difficulties he has been posted to Bhubaneswar under Annexure-A/1 dated 19.06.2000 and that he has only 5 years and 4 months left to reach the age of superannuation the present order of transfer is not sustainable. His next contention is that out of the total strength of the post of Officer Surveyor, Group B, 22% meant for SC & ST. Though the sanctioned strength of Officer Surveyor is 18, 33 Officer Surveyors, Group B have been allowed to work at Bhubaneswar. Out of 33 Officer Surveyors, there are only four SC employees and the applicant is one of them. Further contention of the Applicant is that no ST employee is available and even persons are continuing in Bhubaneswar for more than thirty years whereas on the plea of rationalization of man power, the applicant has been picked up to face the order of transfer and that there was no transfer/placement policy introduced by the Survey of India. Respondents published the policy of transfer just before one week of the present order of transfer dated 09.06.2009 on the plea of rationalization of man power. Under the said policy, he is not

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liable to be transferred. Further stand of the Applicant is that his wife is working in the Survey of India and posted at Bhubaneswar and in terms of the Office Memorandum of DOP&T dated 12th June, 1997 he ought not to have been transferred from the present place of posting from Bhubaneswar.

2. Respondents filed their counter stating therein that the Department of Science & Technology took a major initiative on administrative reforms in Survey of India by constituting a committee of rationalization of man power. The aforesaid committee recommended the transfer of Group A and Group B Officers. The Department of Science and Technology approved the recommendation of the implementation committee. In the light of the report of the Committee of officers, the Ministry of Science and Technology (Department of Science and Technology), the Surveyor General of India took a decision to post out some officer Surveyors ensuring that such officer Surveyors who have comparatively lesser years of service left before their superannuation are retained and younger officer posted out keeping in view that the stay of the officer is not less than five years. For optimum balancing of official manpower the committee of the officers observed that there is substantive surplus strength of officer surveyor in Orissa Geo spatial Data Centre (in short OGDC) which has become a bottle neck in posting the comparatively older officers on repatriation to Orissa GDC two to three years before retirement. As a result of this, a number of Group A and B Officers of most of the GDCs located at different stations throughout India were transferred. In the light of the report of the Committee of Officers, the Applicant was transferred from Orissa GDC vide order dated 09.06.2009 to Chhattisgarh GDC Survey of India, Raipur. Few other Officer Surveyors were also transferred from Orissa GDC Survey of India, Bhubaneswar. Applicant was posted to Bhubaneswar since 19.06.2000. As such he has completed nine

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years of service in Bhubaneswar. Taking into account the duration of posting in Bhubaneswar his name comes at third place after the names of S/Shri Jagabandhu Muduli and K.C.Ojha. The applicant has only served out of his home town nearly for two years. He is also holding transferable post and as per clause 4(iv) of the Transfer Policy an officer having All India Transfer, in public interest where his services are required can be sent on transfer. As such, this Original Application is liable to be rejected.

3. Learned Counsel appearing for both sides reiterated the stand taken in their respective pleadings and having heard them at length perused the materials placed on record. At the outset, I may state that in the matter of transfer of a Government servant having all India transfer liability interference of the Courts and Tribunal is no more resintegra. The Hon'ble Apex Court in the case of Rajendra Singh v State of UP and others [reported in 2010 (1) SLR 632 (SC)]; held that "a government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in administrative exigencies from one place to other. Transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary". In the case of Kendriya Vidyalaya Sangathan v Damodar Prasad Pandey and others (reported in [(2007) 2 SCC (L&S) 596] held that "transfer is an incidence of service and who should be transferred and posted where is a matter for administrative authority to decide". In the case of Premlal Panda and another v Union of India and six others (reported in ILR 2009 Orissa 492} held that that Courts and Tribunal should not interfere in the order of transfer made in exigency of administration". Also Law is well settled by now that transfer being an incidence of service; 'who should be transferred and posted where' is

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a matter for the administrative authority to decide and, unless the order of transfer is shown to be clearly arbitrary or is done by *mala fide* or is made in violation of any operative guidelines or rules governing the transfer, the Court should not ordinarily interfere with an order of transfer of a Government Servant. In the case of **Silpi Bose v State of Bihar** (reported in AIR 1991 SC 532) it was held that '**where a competent authority issued an order transferring an employee with a view to accommodate another employee, then also the said transfer order cannot be interfered with by the Court**'. In the case of **Union of India v S.L.Abbas** (reported in AIR 1993 SC 2444) it has been decided that '**who should be transferred where**' is a matter for the appropriate authority to decide. In the case of **Union of India v H.K.Kirtania** (reported in 1989 (3) SCC 445) and **Gujarat Electricity Board v Atmaram Sungomall Pashani** (reported in AIR 1989 SC 1443) the Apex Court took the view that transfer of an officer holding a transferable post cannot be objected to and that the Authority is the best judge to decide to distribute and utilize the services of an employee. In the case of **State of Orissa v Kishore Chandra Samal** (reported in 1992 (2) SCALE 251) it has been held that where transfer is within the cadre with the identical responsibility, no objection can be raised against the transfer order. In the case of **State of Madhya Pradesh v S.S.Kourav** (reported in AIR 1995 SC 1056) it was held that Courts and Tribunals, not being the Appellate Authority to decide on transfer of the officers (made on administrative grounds); it should allow the wheels of the administration to run smoothly and that Courts/Tribunals are not to interfere in working of the administration. In the case of **Union of India v N.P.Thomas** (reported in AIR 1993 SC 1605) it was made clear that if the transfer is not in violation of any statutory rule there should not be any vested right available to an employee to continue in his original post. Law is also well settled by now


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(vide **S.C.Saxena v UOI and Others-2006 SCC 583**) to the extent that on transfer, **one should report at new station and, thereafter only he/she can raise his grievance**, if any. In the present case the applicant states that he has been transferred by exercise of power with mala fide. But except making such bald allegation he has placed no material in support of such allegation. Law is well settled that people are prone to making the allegation of *mala fide*/usually raised by an interested party (as in the instant case) and, therefore, in very many cases, the Hon'ble Apex Court cautioned that the Courts/Tribunal should not draw any conclusion unless such allegations are substantiated beyond reasonable doubt. As such, I am not inclined to interfere in the order of transfer.

4. But one thing strikes my mind whether the Respondents while ordering transfer of the applicant takes into consideration the DOP&T instruction that where both husband and wife are Government of India employees efforts should be made to post both of them at one place. Here the wife of the applicant is also an employee of the Government of India presently posted in Survey of India, Bhubaneswar. It is not forthcoming as to whether this aspect received appropriate consideration while effecting the transfer of the applicant. This needs to be re-examined by the Respondents. This Tribunal therefore, expresses no opinion on the issue and leaves the matter to the Respondents who are directed to examine the issue and pass appropriate reasoned order within a period of 15 (fifteen) days from the date of receipt of this order and till then the Applicant may continue in his present place of posting.

5. In the result, with the observations and directions made above, this OA stands disposed of. No costs.


(C.R. MOHAPATRA)
Member (Admn.)