

9

OA No.314 of 2009

Sri Pradhan Marandi Applicant
Versus
Union of India & Others Respondents

Order dated: 24/02/ /2010

C O R A M

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

.....

In this Original Application filed under section 19 of the A.T. Act, 1985, the Applicant who is working as DAO, Grade I in the office of the Executive Engineer, Bargarh (R&B) Division, Bargarh challenges the order under Annexure-A/6 dated 15.5.2009 transferring/posting him to the Office of the Executive Engineer, Minor Irrigation Division, Keonjhar and the order under Annexure-A/9 dated 17.07.2009 rejecting his representation against the order under Annexure-A/6.

2. Respondents by filing counter contested the matter and also relying on the earlier order of this Tribunal dated 17th September, 2009 in OA No. 236 of 2009 filed by Shri Manoj Kumar Das, have stated that since the issues raised in this OA were the issues in the aforesaid OA and this Tribunal having answered the same negatively, there remains nothing further in this OA to be adjudicated and as such, this OA being devoid of any merit, is liable to be dismissed.

3. It is the contention of the Learned Counsel for the Applicant that the Applicant is an employee of the Respondent No.1 recruited to the cadre of Divisional Accountants. The Divisional Accountants recruited under the Respondents are posted in Public Works Department/all Engineering Departments under the State Government /Government of Orissa. The cadre consists of Divisional Accountant, Divisional Accounts Officer, Grade II, Divisional Accounts Officer, Grade I and then Senior Divisional Accountant

L

carrying different scale of pay. Divisions are also classified as 'Light', 'Medium', 'Heavy' and 'Very/Super Heavy'. As per the policy of transfer framed by the Respondents Divisional Accountant shall be posted in the Light Division, DAO Grade II in Medium Division, DAO Grade I in Heavy and Sr. Divisional Accountant in Super Heavy Divisions. Respondents invited option and as the Applicant is a DAO Grade I, he ought to have been posted in one of the Heavy Divisions such as Baripada, Keonjhar or Karanjia. But in gross violation of the policy of transfer/transfer guidelines, although Respondent No.5 who is continuing as DAO II was posted to R&B Division, Mayurbhanja a 'Heavy' Division, whereas the Applicant was posted to MI Division, Keonjhar which is coming under Light category. Accordingly it was contended by the Learned Counsel for the Applicant that there has been no uniformity in the transfer and posting of the employees. Representation filed by him was dismissed by the Respondents without giving any reason. Accordingly, Learned Counsel for the applicant contended that as there has been gross injustice caused to the applicant in the decision making process of the matter, the applicant is entitled to the reliefs claimed in this OA. On the other hand, Learned Counsel appearing for the Respondents reiterating the stand taken in the counter has submitted that since according to the applicant this case is covered by the decision in OA No.314 of 2009 and the said case having been dismissed by the Division Bench of this Tribunal, this OA is liable to be dismissed.

4. After giving thorough consideration to the rival submissions of the parties, perused the materials placed on record. In paragraph 4.6 of the OA it has been admitted by the Applicant that similarly situated persons like the applicant has approached this Tribunal in OA No. 236 of 2009 in which this Tribunal while issuing notice granted ad interim order by staying the



- 3 - 11

impugned order of transfer. Meanwhile, OA No. 236 of 2009 has been dismissed by the Division Bench of this Tribunal. On perusal of the record of OA No. 236 of 2009 it reveals that the points raised in this OA were exactly the same ^{as} under consideration in the said OA and after taking into consideration the contentions, this Tribunal rejected the OA No. 236 of 2009. Extract of relevant portion of the order in OA No. 236 of 2009 would suffice, instead of making elaborate discussion of the points raised in this OA. Relevant portion of the order reads as under:

“5. Having given our thoughtful consideration to various submissions made by the parties, perused the materials placed on record. It was fairly submitted by Learned Counsel appearing for the parties that the sanctioned strength of Senior Divisional Accounts Officers is 47 whereas the number of Very Heavy charges is only 43. In the circumstances, four persons shall always be in excess to be adjusted elsewhere. If the argument of the Applicant is conceded that all the Sr. DAOs have to be given posting in Very Heavy charge, this would exceed the sanctioned strength. We have observed that Annexure-A/7 dated 15.05.2009 has been challenged in the garb of violation of the guidelines in regard to the transfer and posting of similarly situated employees working under the Respondents. As we know Judicial Review of the administrative decision especially in the matter of transfers which are made in public interest and for administrative reasons is no more *res integra*. It has been laid down in a number of decisions of the Hon'ble Apex Court that unless the transfer orders are made in violation of any **mandatory statutory rule** or on the ground of mala fide, judicial review of the said order of transfer is unwarranted. A Government servant holding a transferable post has no vested right to remain posted at one place or the other; he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. It has further been held that if the Tribunal continues to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. Transfer made in violation of the guidelines in retaining juniors came up for judicial scrutiny in the case of **UNION OF INDIA v N.P.THOMAS-AIR 1993 SC 1605** wherein Their Lordships of the Hon'ble Apex Court held that infraction of transfer guidelines will not give any right to the Applicant therein to claim his retention when admittedly he was holding a transferable post.

6. We further note that the transfer and posting was made on the basis of the recommendation of a duly constituted committee, taking into consideration the option exercised by the employees and admittedly, Cuttack was one of the places opted by the Applicant. The committee was constituted by high ranking responsible officers. Obviously, the recommendation was only after taking into account relevant factors including the norms evolved by the Department. Which post carries very heavy duty to be manned by whom and what norms to apply in making the assessment are exclusively the functions of the Respondents. Who should be transferred where, is a matter for the appropriate authority to decide. Further posting and transfers of officers cannot be made in a straitjacket manner because promotions and postings of all Sr.DAOs do not take place at one point of time and the norms of transfer i.e. tenure etc. need to be followed.

L

Such an approach is not only irrational but unworkable. It is also not the case of the Applicant that a charge is permanently held to be Very Heavy, Heavy, Medium and Light etc. As such, the plea of the Applicant that he was posted in a **Heavy** duty post instead of **Very Heavy** duty post is a matter of concern for the Department and it is not for this Tribunal to decide and interfere in the order of transfer. But the Applicant straightaway approached this Tribunal by filing the present OA without availing the opportunity of making any representation or appeal if he has any grievance against this posting.

7. In the light of the discussions made above, we find no merit in this Original Application which is accordingly dismissed and as a consequence, the interim order passed on 4th June, 2009 and which is continuing till date stands vacated."

5. I find no justifiable reason to differ from the view already taken by the Division Bench of this Tribunal, as quoted above. Hence, this OA stands dismissed being devoid of any merit. No costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)