

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Cuttack, the 5th August, 2009

O.A.No.316 of 2009

Pre-delivery orders in the above case
are placed below for kind perusal and
concurrence.

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Member(A)

Hon'ble Member(Judicial)

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O.A.No. 316 of 2009

Prasant Kumar Padhi Applicant
Versus
Union of India & Others Respondents

1. Order dated 6th August, 2009.

Applicant is an Upper Division Clerk presently working in the Investigation Division, National Water Development Agency, Bhubaneswar under the Ministry of Water Resources of the Government of India. Vide order under Annexure-A/4 dated 2nd March, 2009 he was transferred and posted to ID, Jaipur. He preferred representation seeking the said order of transfer among other grounds on the ground of illness of his father who is suffering from CVA, HTU, Neuro Surgery etc. and the transfer to Jaipur would deprive his father to avail of the specialized treatment which he is availing at Capital Hospital, Bhubaneswar and SCB Medical College and Hospital, Cuttack. Apprehending his relieve before any consideration is given to his representation, he approached this Tribunal in OA No 182 of 2009. The said OA was disposed of on 14.05.2009 at the admission stage directing as under:

“6. Having regard to the above, we are of the view that the order transferring the applicant to Jaipur as per Annexure-3 should be stayed for a period of 03(three months and in the meanwhile, the Director General, National Water Development Agency, New Delhi has to consider Annexure-8 and dispose of the same within a reasonable time, at any rate, within 03 (three) months from today. Till a final

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decision as directed above is taken, Annexure-3 shall be stayed so far applicable to the applicant. It is also made clear that this stay order will take place if the applicant has not been relieved as on date."

2. After disposal of the aforesaid OA, by making another representation, applicant sought cancellation of his order of transfer. The said representation was forwarded with recommendation for cancellation of the order of transfer, by the Executive Engineer of ID, NWDA, Bhubaneswar under Annexure-A/14. In consideration of the representation of the Applicant dated 07.05.2009, the Director (Admn.) NWDA, New Delhi in letter dated 9/10th July, 2009 allowed three months more time to the Applicant to continue at Bhubaneswar. Pursuant to the said letter the Chief Engineer (N), NWDA, Lucknow in letter dated 10.07.2009 directed the S.E., Investigation Circle, NWDA, Bhubaneswar to relieve the applicant on 06.08.2009. Being aggrieved by the said order of the Headquarters communicated by Chief Engineer, the applicant preferred this OA challenging his order of transfer and subsequent order asking him to be relieved on 06.08.2009.

3. Heard Ms. Usarani Padhi, Learned Counsel for the Applicant and Mr. Subasish Mishra, Learned Additional Standing Counsel appearing for Union of India and perused the materials placed on record.



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4. It is the contention of the applicant that as per the transfer guidelines under Annexure-1 the applicant is not liable to be transferred from Bhubaneswar as a matter of routine. In other words in his case transfer is not an incident of service; the option exercised by him giving three choice places of posting in the event of his transfer has not been taken into consideration and not even the recommendation made by his immediate authority while ordering transfer to Jaipur; though this Tribunal directed for consideration of the representation made by the Applicant which was also in consonance of clause 7 of the transfer guidelines. The Authority without complying the orders of this Tribunal in letter and spirit, presuming that the applicant has only asked for three months time, only deferred date of relieve of the Applicant. Further case of the Applicant is that there are no such medical facilities available at Jaipur for the treatment of his father and in case he is posted in one of the places opted by him; he will be able to take care of the treatment of his father which is the paramount consideration on the part of the applicant. As there has been miscarriage of justice in the decision taking process of the matter, Learned Counsel for the Applicant prays for quashing of the order of transfer under Annexure-A/4 dated 2nd March, 2009 (so far as he is concerned), the order under Annexures-A/15 & Annexure-A/16. On the other hand it has been contended by the Learned Counsel

appearing for the Union of India/Respondents that in the matter of transfer the interference of the Court/Tribunal is very limited as held by the Hon'ble Apex Court. It has further been stated that it is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary, in the law governing the conditions of service. Unless the order of transfer is shown to be an outcome of a *mala fide* exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, the order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. In view of the above, Learned Counsel for the Respondents/Union of India prayed for dismissal of this OA.

5. Having given in-depth consideration to the rival submissions of the parties, we are of the view that none of the points raised by the Applicant persuades us to interfere in the order of transfer which has admittedly been made in public interest; especially when this Tribunal being not the appellate authority to decide who should be transferred where and at what point of time.

6. In the light of the discussions made above, we find no merit in this OA even for issuing notice. Hence, this OA stands dismissed at the admission stage.

7. Send copies of this order along with copies of the OA to the Respondents and free copies of this order be given to Learned Counsel for both sides.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


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