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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 558 OF 2009
Cuttack, this the 22nd day of February, 2010

Sri Gautam Charan Rout..... Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(C. R. MOHAPATRA)
ADMIN. MEMBER

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ORIGINAL APPLICATION NO. 558 OF 2009

Cuttack, this the 22nd day of February, 2010

CORAM:

Hon'ble Shri C.R. Mohapatra, Member (A)

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Sri Gautam Charan Rout, aged about 40 years, S/o. Durga Charan Rout, Presently working as Joint General Manager, Ordnance Factory, Bodmal, Ministry of Defence, At-Bodmal, Dist-Bolangir, Orissa.

..... Applicant

By the Advocate(s) Mr. S.K. Ojha

Vs.

1. Union of India represented thorough the Secretary, Ministry of Defence, Department of Defence Production, New Delhi.
2. Ordnance Factory Board, represented by the Chairman, 10-A, Saheed Khudiram Bose Road, Kolkata-700 001.
3. Director General, Ordnance Factory Board, 10-A, Saheed Khudiram Bose Road, Kolkata-700 001.
4. General Manager, Ordnance Factory, Badmal, Bolangir-767 770.

..... Respondents

By the Advocate(s)..... Mr. U.B. Mohapatra.

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O R D E R

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

Being aggrieved with the order of transfer at Annexure-A/8, the applicant a Joint General Manager, Ordnance Factory, Bolangir has filed the present Original Application seeking the following relief:-

- “ 1. To pass appropriate orders quashing the order dated. 24.11.09 passed by the Director, OFB, Kolkata transferring the applicant to OF Bhandra.
2. to quash the release order dated 25.11.09 issued by the Works Manager, OF Badamal.
3. pass appropriate orders as may be deem fit and proper in the interest of justice.”

2. The applicant has alleged that the transfer order has been issued with a malafide intention and vindictive attitude of the Respondents as according to him his continuance was not conducive or suitable to the Respondents. The transfer has been made in the mid session just after one year and that the General Manager has a grudge against him as he was perceived to be the main person behind the CBI inquiry. Further, the applicant contend that even if the transfer has been made in public interest, it is actually camouflage of punitive action or harassment to the applicant. The applicant's daughter who is studying in ClassIX would be seriously affected and the family will be dislocated if the

transfer is effected in the mid-session. In the above background the applicant has come to this Tribunal on the passing of the order dated 24.11.09 transferring him to Ordnance Factory Bhandara. As an interim prayer the applicant sought the operation of the order of transfer to be stayed during the pendency of the O.A. When the matter came up for admission, on 30.11.09 as an interim measure the order of transfer (Annexure-A/8) in so far as the applicant is concerned was kept in abeyance for a period of 45 days. This interim order has continued from time to time.

3. The Respondents have filed a detailed counter contesting the claim of the applicant and have also sought the vacation of stay on the ground of the work getting affected in the Ordnance Factory, Bhandara. The Respondents contend that the applicant was transferred to Ordnance Factory, Badmal from O.F. Ambajhari, Nagpur vide order dated 24.03.2008. The applicant joined his new assignment at O.F. Badmal on 22.09.2008. Immediately within a period of 03 months, the applicant submitted representation requesting for transferring out from O.F. Badmal to any factory in Nagpur since he could not get his daughter admitted in Kendriya Vidyalaya in Class-VIII. The applicant vide OFB letter dated 20.03.09 was requested to furnish the reasons with full details as to why his daughter could not get admission in Kendriya Vidyalaya. However, the applicant managed to get his daughter admitted in Class IX during the session 2009-10. Thereafter, another

representation of Shri Rout was forwarded under factory letter dated 25.03.09, wherein the Applicant requested for his transfer on compassionate ground to O.F. Ambajhari so that he can lead a normal life. Due to administrative reason the competent authority could not agree to the request of the Officer immediately.

Thereafter, again in October'2009, Shri Rout made another representation dated 27.10.09 stating that his daughter who was admitted in IX standard is not able to cope up with the school and requested for transfer to any of the units located at Nagpur or Pune. The said representation was considered by the competent authority sympathetically and ordered his transfer to O.F. Bhandara which is only 50 KM away from Nagpur city.

The thrust of the counter filed by the Respondents is that the transfer has been made keeping in mind the choice given by the applicant to the DGOF and Chairman. The allegation of punitive action or harassment to the applicant has been strongly denied by the Respondents who have stated that there has been no linkage of the visit of CBI officials with the order of transfer of the applicant. They have further stated that since the daughter of the applicant is studying in Class-IX of Kendriya Vidyalaya the transfer will not affect the studies as the same syllabus and periodicity is followed by the Kendriya Vidyalayas allover the country. By pointing out the transfer is an incidence of service and there is no proof of

malafide intention of the authority and transfer has been effected on his own request, Respondents emphasize that the applicant has no right to oppose the transfer order. In support of their stand the Respondents have cited a few decisions of the Hon'ble Apex Court in the case of State of M.P. Vrs. S.S.Kourev (1995) 3 SSC 270, in the State of U.P. Vrs. Goverdhan Lal (2004) 11 SCC 402, in Gujrat Electricity Board Vrs. Atma Ram Sungomai F/Poshni 1989 2 SCC 602 Union of India Vrs. S.L. Abbas (1993) 4 SCC 357 and Kendriya Vidyalaya Sangathan Vrs. Damodar Prasad Pandey (2004) 12 SCC 299, in Hafizur Rahaman Vrs. Secretary, Department of Atomic Energy & Others, in UOI Vrs. S.L. Abbhas (1993) 4 SCC 357, in Abanai Kanta Roy Vrs. State of Orissa (1996) SCC (L&S). The Respondents therefore, press for dismissal of the O.A. being devoid of any merit.

4. It was brought to notice that the Respondents had filed a Writ Application against the order dated 30.11.09 passed by this Tribunal granting the interim relief as already stated. The Hon'ble High Court of Orissa in their order dated 21.12.09 ordered as under:-

"We, therefore decline to interfere with the impugned order. The application stated to have been filed by the petitioners for vacation of stay be taken up for disposal or the Tribunal may dispose of the Original Application early. Since the case now stands posted to 23.02.09, the parties may move the Tribunal in this regard."

Consequent to this direction of the Hon'ble High Court of Orissa, the hearing was continued and finally concluded on 16.02.2010.

5. Heard the Ld. Counsel for the parties and perused the documents available on record.

6. During the hearing both sides reiterated the points already taken up by them in the respective pleadings. The Ld. Counsel for the applicant submitted that he has filed a C.P. against the alleged violation of interim order of this Tribunal dated 30.11.09 which is still pending. He further submitted that in the order of transfer it is clearly mentioned that the transfer order at Annexure-A/8 has been issued in public interest but subsequently in the counter the order is being justified on the ground that the applicant had asked for the same. Hence the averments made by the Respondents in their counter that the transfer of the applicant has been made because of his own request is contradictory. The Ld. Counsel for the applicant further pointed out that there were two posts of Joint General Manager at Bhandara and hence it is not correct to say that because of absence of the applicant the work is suffering as submitted by the Sr. Standing Counsel. It was further emphasized by the Ld. Counsel for the applicant that it is against Govt. policy to effect transfer during mid-academic session. Ld. Counsel for the applicant submitted a certificate from the Kendriya Vidyalaya No.1 of Badamal of Bolangir, Orissa that the daughter of the applicant is a bonafide student

studying in Class IX in the Kendriya Vidyalaya and the academic year is expected to expire on 31st March, 2010. He further submitted that the daughter of the applicant is appearing at the Board Examination and hence any dislocation at this juncture will vitally affect her academic career.

7. Having given thoughtful consideration to the various averments made in the pleading as well as the arguments during hearing I am unable to come to conclusion that the transfer order at Annexure-A/8 in relation to the application is borne out of malafide or vindictiveness. No clinching evidence/document could be produced by the Counsel for the applicant except making a bald statement and linking up a communication at Annexure-A/6. This transfer order is a general order involving 12 officers of various O.Fs located across the country. The transfer of these officers have been stated to be in public interest and the request of the applicant seems to have been accommodated by covering his case under 'public interest' apparently to avoid financial hardship to the applicant. The contention of the applicant is that since the C.P. on interim order is pending the O.A. should not be decided does not appear to be logical. The Contempt Petition is against an alleged violation of interim order of this Tribunal and the issue is completely different and has no nexus with the adjudication of the pending O.A. which needs to be disposed of consequent to the Hon'ble High Court's order dated 21.12.09. This Tribunal in similar cases, by relying on the

Hon'ble Apex Court Judgement of S.C. Saxena Vrs. UOI & Ors. (2006) SCC (L&S) 1890 has held that the employee must comply with the transfer order and join the new post in the first instance. Hence, there is no reason to take a different view in the present O.A. The only point which merits consideration in this case is that the daughter of the applicant is in Class -IX and is stated to be appearing in final examination and her continuance till the expiry of the current academic session is essential in the interest of her academic pursuits. This needs to be allowed.

8. In view of the above observations, the transfer of the applicant is found to be neither arbitrary ~~and~~ nor malafide rather fulfillment of his request to go to a place of choice; I do not see any infirmity in the order of transfer in so far as the applicant is concerned. Hence, the O.A. being devoid of any merit, the same is dismissed. However, it is made clear that the transfer may be effected only after the expiry of the current academic session i.e., 31.03.2010. No costs.


(C. R. MOHAPATRA)
ADMIN. MEMBER