

3
O.A.No.12 of 2010
Cuttack, this the 13th day of January, 2010

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

.....

On being mentioned by Learned Counsel for the Applicant, in presence of Mr. S.Mishra, Learned ASC (on whom copy of this OA has already been served) appearing for the Respondents, this matter is taken up today.

2. Heard Learned Counsel for both sides and perused the materials placed on record.
3. Applicant, who is continuing as Engineering Assistant in the All India Radio, Cuttack, having faced the order of transfer to AIR, Sambalpur under Annexure-A/2 dated 08.01.2010 submitted representation under Annexure-A/5 dated 11.1.2010 seeking cancellation of the same on the grounds mentioned therein. Apprehending his relieve before any decision is taken on the said representation, he has approached this Tribunal in the present OA seeking to quash his order of transfer to AIR, Sambalpur. His main ground of challenge is that in gross violation of the transfer policy framed by the Government inasmuch as while retaining persons having longest stay in the present station he has been transferred to AIR Sambalpur that too during mid academic session. It is the stand of the Applicant that in case the present order of transfer is given effect to then the study of his children would seriously be affected. This was strongly opposed by Mr. S.Mishra Learned ASC. His contention is that not the applicant several other persons have also been transferred in order under Annexure-A/2. As the transfer has been made in public interest in view of the settled law, the Tribunal should not interfere in it

more so; interference in the present order of transfer would dislocate the entire chain of transfer which has been made in public interest.

4. It appears, two persons viz. the applicant and another Shri Tandra Mondal have been transferred from AIR, Cuttack and in their places two persons have been posted to AIR, Cuttack. **But none of them has been made as party to this OA.** It is not known whether the applicant has meanwhile been relieved from the post but it was submitted by Learned Counsel for the Applicant that he has not been relieved till date. Be that as it may, it is well settled law that no Government servant or employee of a public undertaking has any legal right to be posted for ever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service necessary too in public interest and efficiency in public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Tribunal cannot interfere with such orders as a matter of routine, as though they were the appellate authority substituting their own decision for that of the employer/management, as against such order passed in the interest of administrative exigencies of the service concerned. I am not convinced that the present order of transfer suffers from any of the infirmities. Similarly I see no force in the contention of dislocation of the study of the daughter as she is reading in College and till completion of such study the applicant cannot claim to continue in his present station. In view of the above, I am not inclined to interfere in the order of transfer.

5. However, I find some force in the contention of Learned Counsel for the Applicant for dislocation of the study of the son of Applicant,

5 who is continuing in class V in KV, Cuttack in case the present order of transfer is made effective and the academic session of Class V would be over by the end of March, 2010. It is seen that the representation of the applicant is pending consideration in which the applicant has taken this as one of the grounds for cancellation of his order of transfer. Hence, this Original Application is disposed of at this admission stage by directing the Respondents to consider and dispose of the representation of the Applicant for keeping the order of transfer in abeyance till the end of the academic session (31st March, 2010) if the applicant has not already been relieved or the other person who is coming in place of the applicant has not already been relieved, he not being made as party to this OA. The above direction is fortified by the decision of the Hon'ble Apex Court in the case of **Director of School Education, Madras and Another v O.Karuppa Thevan and another**, 1995

(1) AT (SC) 21.

Send copy of this order along with copies of the OA to the respondents.


(C.R.Mohapatra)
Member (Admn.)